CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 59

GENERAL LELAND S. HOBBS, POST COMMANDING OFFICER, FORT DIX, NEW JERSEY, PETITIONER

vs.

UNITED STATES EX REL. JACOB S. SAMUELS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 13, 1946
CERTIORARI GRANTED MAY 27, 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. —

GENERAL MADISON PEARSON, POST COMMANDING OFFICER, FORT DIX, NEW JERSEY, PETITIONER

vs.

UNITED STATES, EX REL. JACOB S. SAMUELS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX

	Original	Print
Record from D. C. U. S., District of New Jersey	1	1
Docket entries	1	1
Designation of record	2	1
Petition for writ of habeas corpus	4	2
Writ of habeas corpus	8	4
Returns to writ	9	5
Traverse to return	11	6
Reporter's transcript of proceedings	13	7
Caption and appearances	13	7
Colloquy between Court and counsel	14	7
Motion for release of petitioner	15	8
Testimony of—		
Rabbi Louis Wellot	18	9
Rabbi Samuel Quinn	26	13
Rabbi Moshe B. Rivkin	51	26
Rabbi Samuel Quinn (recalled)	65	33
Jacob Samuels	74	37
Ben Hertz	105	52
Memorandum opinion, Rice, J.	111	55
Order dismissing writ of habeas corpus	118	58
Notice of appeal	120	59
Orders extending time	121	60, 61
Order vacating order extending time	123	61
Clerk's certificate [omitted in printing]	124	62
Proceedings in U. S. C. C. A., Third Circuit	125	62
Order to show cause	125	62
Affidavit of Meyer Kreeger	127	63

	Original	Print
Order assigning judge	132	65
Minute entry of hearing on motion for rule to show cause	133	65
Order denying application for return of relator, etc	134	66
Minute entry of argument and submission	135	66
Opinion, per curiam	136	67
Judgment	137	68
Clerk's certificate [omitted in printing]	138	69
Order extending time within which to file petition for certiorari	139	69
Order allowing certiorari		70

1 In United States District Court
District of New Jersey

Civ. 4617

IN THE MATTER OF THE APPLICATION OF JACOB S. SAMUELS FOR A WRIT OF HABEAS CORPUS

Docket entries

Jan. 25, 1945—Petition for Writ of Habeas Corpus filed.
Jan. 25, 1945—Writ of Habeas Corpus issued with allocatur (Rice).
Jan. 27, 1945—Copy of Writ with Marshal's return thereon filed.
Feb. 2, 1945—Hearing on Writ of Habeas Corpus. Ordered motion for an order releasing the Petitioner from the custody of the Military Authorities—DENIED. Decision Reserved. Briefs to be filed (Rice).
Feb. 2, 1945—Writ of Habeas Corpus returned.
Feb. 2, 1945—Return on Writ of Habeas Corpus, filed (J. T. Daly, Lt. Col.).
Feb. 2, 1945—Return on Writ of Habeas Corpus, filed (U. S. Atty.).
Feb. 2, 1945—Traverse, filed.
Feb. 13, 1945—Transcript of Testimony, filed.
Feb. 19, 1945—Memorandum, filed (Rice) (Dismissing petition and quashing writ).
Mar. 9, 1945—Order dismissing Writ of Habeas Corpus, filed (Rice).
Mar. 22, 1945—Notice of Appeal, and acknowledgment of service, filed.
June 27, 1945—Consent Order extending time to file record on appeal to 7/30/45, filed (Fk) (Copy sent U. S. C. C. A.).
June 27, 1945—Order vacating order extending time to file record on Appeal, filed (Fk).
Aug. 22, 1945—Designation of Contents of Record on Appeal.
Aug. 23, 1945—Certified copy of order of U. S. C. C. A. extending time to file record on Appeal to 8/31/45 filed.

2 In United States District Court

[Title omitted.]

Designation of record

The following are hereby designated to constitute the Record on Appeal in the above case, it being intended in this designation

to include all the pleadings, opinion of the court, order, notice of appeal, all of the testimony, and all of the exhibits:

1. Petition of Jacob Samuels.
2. Writ of Habeas Corpus.
3. Return to the Writ of Habeas Corpus.
4. Additional return to the Writ.
5. Traverse.
6. Opinion of Judge Rice (Memorandum).
7. Order of Judge Rice.
8. Notice of Appeal.
9. Complete transcript of testimony before Judge Rice taken February 2, 1945.
10. The entire file of the Local Board which was incorporated by reference as part of the return, including the two documents offered as exhibits by relator and marked Relator's Exhibit P–1 and Exhibit P–2.

Two copies of each of the above designated are attached hereto to form the appellant's Record on Appeal, excepting the exhibits consisting of the file of the local board and relator's exhibits P–1 and P–2 which are being photostated by the Clerk of the District Court in duplicate and when so photostated will constitute a portion of this record.

3 Please note further that the above designation contains all of the pleadings, opinion, order, proceedings, testimony and exhibits in the case, so that there is nothing further to be added by respondent to this designation. If by error the above designation should have excluded any portion of the papers on file, it is respectfully requested that the Clerk prepare two copies of the same for inclusion in the record and charge the cost of such preparation to the relator.

GEORGE M. EICHLER,
Attorney for Relator-Appellant,
26 Journal Square, Jersey City, N. J.

To: WILLIAM H. TALLYN,
Clerk of U. S. District Court,
District of New Jersey.

4 In the United States District Court

[Title omitted.]

Petition

Filed Jan. 25, 1945

To the Honorable District Court of the United States for the District of New Jersey:

Your petitioner, Jacob S. Samuels, respectfully represents and

shows to this Honorable Court that he is a citizen of the United States and a resident of the State of New York; that he is unjustly and unlawfully detained at Fort Dix, New Jersey, a military fort of the United States by virtue of an induction into the armed forces of the United States pursuant to an order of induction issued under the Selective Training and Service Act of 1940 by Local Draft Board #193 of Kings County of the State of New York, 260 Broadway, Brooklyn, New York, ordering him to report for induction on December 20, 1944; that pursuant thereto, he was delivered to the military authorities at Fort Dix, New Jersey on December 26, 1944.

Your petitioner further respectfully represents and shows to this Honorable Court that at the time the said order of induction was issued by the said draft board, your petitioner was—

(a) a student at a theological or divinity school known as Mesifta Talmudical Seminary located at 141 South 3rd Street, Brooklyn, New York, preparing for the orthodox Hebrew ministry;

5 (b) that the said Mesifta Talmudical Seminary is a theological or divinity school which has been recognized as such for more than one (1) year prior to December 16, 1940;

(c) that at the time of his induction, your petitioner was, in good faith, pursuing the prescribed course that would have, when completed, prepared him for the Hebrew rabbinate or ministry;

(d) that the Selective Training and Service Act of 1940 in Section 5 (d) thereof, provides that regular or ordained ministers of religion and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one (1) year prior to December 16, 1940, shall be exempt from training and service under the Act;

(e) That the Selective Service regulations (Section 622.44) promulgated by the President of the United States under the said Act provides for IV–D classification for a minister of religion or divinity student and for his deferment from training and service by reason of such status.

Your petitioner further represents that the said draft board, with full knowledge of petitioner's status, originally classified him in IV–D but not withstanding the protest and objection of petitioner reclassified him in Class 1A, a classification applicable to men referred to as "available for military service."

Thereafter, your petitioner promptly appealed from the said 1A classification to an appeal board, pursuant to said regulations, but his appeal was denied.

6 Your petitioner further represents that by reason of the facts and the law the said draft board was without power to order the induction of your petitioner in the armed forces of

the United States; and that by reason thereof, your petitioner's detention at Fort Dix is unjust and unlawful.

Wherefore, to be relieved of said unlawful and unjust detention, your Petitioner prays that a writ of habeas corpus to be directed to General M. Pierson, Post Commanding Officer at Fort Dix, may issue in his behalf so that your petitioner may be forthwith brought before this Court to do, submit to, and receive what the law may direct.

(S) JACOB S. SAMUELS,
Petitioner.

(S) GEO. M. EICHLER,
Attorney of Petitioner.

December 27, 1944.

7 [*Duly sworn to by Jacob S. Samuels; jurat omitted in printing.*]

8 In United States District Court

Writ of habeas corpus

Filed Feb. 2, 1945

The United States of America to:

General M. PIERSON, *Post Commanding Officer, Fort Dix, New Jersey, Greeting:*

It is hereby commanded that you be and appear before the Honorable Eugene Rice, Judge of the United States District Court at the United States District Courtroom, Federal Building in the City of Newark, New Jersey, on the 2nd day of February 1945 at 11:00 A. M., and have with you the body of Jacob S. Samuels, of New York, New York, now in your custody; that you certify and make known the true cause of the detention of the said Jacob S. Samuels; that you then and there do whatsoever the said Judge shall determine concerning you in this behalf, according to law; and that you have then and there this writ.

Witness, the Honorable Eugene Rice, Judge of the United States District Court for the District of New Jersey.

WILLIAM H. TALLYN,
Clerk.

Per EDYTHE G. BAUM,
Deputy Clerk.

Issued January 25, 1945.
The Writ is allowed—1/25/45.

EUGENE RICE, *U. S. D. J.*

9 United States District Court

[Title omitted.]

Return on writ of habeas corpus

Filed Feb. 2, 1945

To the Honorable EUGENE RICE, *Judge of the United States District Court for the District of New Jersey:*

The respondent, Brigadier General Madison Pearson, Commanding General, Fort Dix, New Jersey, upon whom has been served a writ of habeas corpus for the production of Jacob S. Samuels, respectfully makes return and states that he holds the said Jacob S. Samuels by authority of the United States as a soldier in the Army of the United States, the said Jacob S. Samuels having been duly and regularly inducted therein on or about December 26, 1944, under the provisions of the Selective Service Training Act of 1940, and amendments thereto.

Obedient, however, to the mandate of said writ, the respondent herewith produces before the Court the body of said Jacob S. Samuels.

Annexed hereto and made a part hereof is the Local Board File.

Your respondent prays this Honorable Court to dismiss the writ.

(S) Madison Pearson,
MADISON PEARSON,
Brigadier General, U. S. A.,
Commanding Fort Dix, N. J.

10 In United States District Court

[Title omitted.]

Return on writ of habeas corpus

Filed Feb. 2, 1945

To the Honorable District Court of the United States for the District of New Jersey:

General M. Pierson, Post Commanding Officer, Fort Dix, New Jersey, respectfully shows:

That he holds Jacob S. Samuels by authority of the statutes of the United States, as a member of the United States Army, the said Jacob S. Samuels having been lawfully selected and inducted

under the provisions of the Selective Training and Service Act as amended 50 U. S. C. A. Appendix Section 301 et seq. in that the said Jacob S. Samuels then and there being a registrant of Local Board No. 193, Kings County of the State of New York, 260 Broadway, Brooklyn, New York, was duly classified on August 22, 1944, in Class 1-A by said Board, and that thereafter, said classification was affirmed by the Board of Appeal. Subsequently, said Jacob S. Samuels was ordered to report for induction by said Local Board on December 20, 1944, and thereafter was inducted into the United States Army and the Selective Service file of said Local Board is attached hereto and made a part of this return.

And your respondent makes return of these facts which he tenders himself ready to prove as shall be required to the Court, and that such disposition of the case may be made as shall be right.

(S) MADISON PEARSON,
Brig. General, U. S. A.,
Commanding Fort Dix, N. J.

By JOHN T. DALY,
Lt. Col. J. A. G. D.,
Post Judge Advocate.

(S) Thorn Lord,
THORN LORD,
United States Attorney.

By (S) CHAS. A. STANZIALE,
Assistant United States Attorney.

11 In United States District Court

[Title omitted.]

Traverse to return

Filed Feb. 2, 1945

Petitioner denies the allegations contained in the return and reiterates all facts stated in the petition filed herein in his behalf as reasons why such detention is not warranted in law.

(S) JACOB S. SAMUELS,
Petitioner.

(S) GEORGE M. EICHLER,
Attorney of Petitioner.

[*Duly sworn to by Jacob S. Samuels; jurat omitted in printing.*]

13 In United States District Court

District of New Jersey

Civil 4617

JACOB S. SAMUELS, PETITIONER

vs.

BRIGADIER GENERAL MADISON PEARSON, POST COMMANDING OFFICER, FORT DIX, RESPONDENT

Reporter's transcript of proceedings

NEWARK, N. J., *Friday, February 2, 1945.*

Before Hon. EUGENE RICE, U. S. D. J.

Appearances: George M. Eichler, Esq., and Meyer Kreeger, Esq., of the New York Bar, for the petitioner. Charles A. Stanziale, Esq., Assistant United States District Attorney, for the respondent.

14 Mr. STANZIALE. If your Honor please, at this time I would like to file with the Court the return on the writ of habeas corpus in the matter of Jacob S. Samuels. This is on a writ of habeas corpus issued to produce the body of this defendant before the Court this morning. With my return on the writ of habeas corpus I make a part of the return the selective service file in the matter.

The COURT. Do you have your returns?

Mr. STANZIALE. Yes. I have a return by Madison M. Pierson individually and also the same return, including more facts, attested to by our office as appearing for the Brigadier General.

Mr. EICHLER. I have not seen the return yet, your Honor.

The COURT. I think that probably I should read the return. I have not read it. This matter was set for eleven. I thought it would be eleven before we could reach it.

Mr. EICHLER. Surely.

The COURT. And I think I will just return to the chambers and read the return.

Mr. EICHLER. All right, your Honor. I have a traverse here to the return, and of course I think I should file it with your
15 Honor then as the answering pleading, and then we are at issue.

The COURT. I will be in here by eleven o'clock. There will be a recess until eleven.

Mr. EICHLER. If your Honor please, there was one thing about the memorandum, a slight modification. Your Honor will recall I filed a memorandum with you in this matter. In the facts where I state that Samuels took up his prerabbinate course in the Yeshivah Torah Vodaath, actually he took it up in the Mesifta Talmudical Seminary. In other words, the theological school that he was going to at the time he was inducted was also the same school where he took up his prerabbinate course. That is the only change.

(A short recess is taken.)

Mr. STANZIALE. Your Honor, may the record show that in obedience to the writ there has been produced before the Court this morning Jacob S. Samuels.

(The relator stands up in the court room.)

The COURT. All right. You may have a seat there or come around inside, either one, as you may desire.

Mr. EICHLER. Are you ready?

Mr. STANZIALE. I am ready, Mr. Eichler.

Motion for release of petitioner.

Mr. EICHLER. If your Honor pleases, first I would like to make a motion. I would like to make a motion at this time that
16 based upon the petition for the writ of habeas corpus, the return of the petition and the traverse, which are the pleadings in this application, we find that there is no contradiction or denial of the facts set forth in the petition by the return itself. The return merely asserts that the petitioner was inducted into the armed forces pursuant to the law after an order of induction had been issued by the local draft board, that none of the facts as set forth in the petition or the law set forth therein accompanying the facts are in any way contradictory, and therefore based on the law, which provided for exemption of theological students, assuming the facts in the petition have not been denied, and those are the facts asserted, it occurs to me there isn't any need to take any testimony before your Honor. My motion is therefore that your Honor make an order releasing this man from the custody of the military authorities.

The COURT. Overruled.

Mr. EICHLER. Your Honor will permit me an exception.

The COURT. Yes.

(Which exception is hereby allowed and sealed accordingly.) (Sealed.)

Mr. EICHLER. First of all, for the record I would like to make a statement that the Mesifta Talmudical Seminary is a theo-
17 logical or divinity school which has been recognized as such for more than one year prior to December 16, 1940. As I

understand it, Mr. Stanziale will not dispute that statement of fact.

Mr. STANZIALE. If your Honor please, let the record show that the government does not take the position that this school is not a recognized school for rabbinical purposes. However, I want the record to show that on the representation of counsel that he will have some member of the school here for the purpose of my asking any questions, not in regard to whether the school is a recognized school or not, but in regard to other matters which I believe are pertinent to the issue; is that correct, Mr. Eichler?

Mr. EICHLER. Yes, sir.

Mr. STANZIALE. Very well. As far as I know, your Honor, this school is on the list of qualified seminaries issued by the Director of Selective Service.

Mr. EICHLER. We expected to have that today for your Honor this morning, but unfortunately we have not been able to produce it.

Now, may I present to your Honor Mr. Meyer Kreeger, a member of the New York Bar, who is my associate counsel in these proceedings, and with your Honor's permission he will directly examine one or two of the witnesses in this matter.

The COURT. All right.

18 RABBI LOUIS WELLER, called and sworn on behalf of the petitioner, testified as follows:

Direct examination by Mr. KREEGER:

Q. Are you an orthodox rabbi, Rabbi Weller?—A. Yes, sir.

Q. Are you a member of the Union of Orthodox Rabbis of the United States and Canada?—A. Yes, sir.

Q. Are you on the Executive Committee of that organization?—A. Yes, sir.

Q. Is the Union of Orthodox Rabbis of the United States and Canada the highest religious authority for orthodox Jews in the United States?—A. Yes, sir.

Q. And were you instructed by the officers of the Union of Orthodox Rabbis to appear this morning in connection with this case?—A. Yes.

Q. Are you acquainted with the institution known as the Mesifta Talmudical Seminary?—A. Yes, sir.

Q. Does it also have a Hebrew name known as Torah Vodaath?—A. Yes.

Q. Is that an orthodox rabbinical seminary?—A. Certainly.

Q. How long has that been in existence as an orthodox rabbinical seminary, to your knowledge?—A. I am here in the Union of Orthodox Rabbis, I am here since I am over to this country.

19 Q. How long is that?—A. About twenty years.

Q. And during that period of time have you known of this institution as an orthodox rabbinical seminary?—A. Yes, sir.

Q. Do you know of your own knowledge whether during that period of time it has been recognized as an orthodox rabbinical seminary by the Union of Orthodox Rabbis of the United States and Canada?—A. Since I am a member there what I can remember, always on the conventions we hold, this seminary is well recognized as a rabbinical seminary and we appeal always for help, and so on.

Q. So that, Rabbi Weller, during this period of time the Union of Orthodox Rabbis has recognized the Mesifta Talmudical Seminary as a rabbinical seminary?—A. Right.

Mr. KREEGER. That is all.

Cross-examination by Mr. STANZIALE:

Q. Rabbi Weller, this rabbinical seminary gives religious instructions in the faith of Judea; is that correct?—A. Sure.

Q. To what students is it open?—A. To what students?

Q. Students; yes.—A. We have two departments. The Mesifta Talmudical Seminary is open for the higher students and to learn there they have several grades there until they are coming to the highest grade and they get ordained.

20 Q. Now, you say several grades. What are the grades? What grades does it have?—A. It is not the number, but for instance——

Q. What classification, in other words?—A. That is right. It is according when a boy comes to that school, before he goes to parochial school. When he is graduating the parochial school he is about fourteen years old, about, or thirteen years old, because it is the elementary school comes together in the parochial school. Then since then they have about eight grades. When the boys are coming in every grade, he studies there a year if he is all right. Otherwise he might stay a year and a half, but at least a year. Then when he comes after finish up all the eight grades, and then they are taking up the rabbinical code called the Shulchan Oruch, which this is necessary for an orthodox rabbi to know, and these are the grades.

Q. At what age may they enter the rabbinical shool?—A. At what age?

Q. Yes.—A. It is according to the ability of the person. It cannot be less than—even if he is a genius, he cannot be there before eighteen years.

Q. I mean, what is the earliest age that a person may start to go to Mesifta school or seminary?—A. The Mesifta School, can start as early as fourteen years even.

Q. Fourteen years?—A. Because it comes gradually
21 after the parochial school.

Q. Then the course is for how long if a person should start at fourteen years, before he studies or takes courses to become an ordained rabbi?—A. Before?

Q. Yes. For how long is the course?—A. For how long?

Q. Yes.—A. It might be to eight years, and it might be nine years. It is according to the person. There is a school—I beg your pardon.

Q. Surely.—A. We have several rabbinical seminaries here in New York. Some seminaries is like they are not conservatives, but the knowledge that a person has to get to get ordained is not as hard as in this place. For instance, here he must know what we call it the Seder Talmud. It is a certain number of books of Talmud. Otherwise we will not recognize him to know the code of the law, because we don't want he shall know the law from short. He shall know the root of the law, and practically this seminary is a seminary which is very strict, and one who is getting ordained from this school is more recognized in knowledge more than any other school.

Q. Let me ask you this, Rabbi Weller. For how long is the course to become an ordained rabbi?—A. For how long?

Q. Yes. Is there any specific number of years?—A. Any period of years. If a person is fair, it has to take him about eight years.

22 Q. Eight years?—A. At least.

Q. That is, to prepare himself to become an ordained rabbi?—A. That is right. Not to prepare himself. I mean, if he is all right, he can in the eight years, he can also, he can come out as an ordained rabbi. Maybe one who is not—one who is not so fair brains, he takes a year later.

Q. Let me ask you this. There is a difference between a rabbi and an ordained rabbi, isn't there?—A. I wouldn't say so, sir.

Q. Well, isn't a person that is learned in the Talmud and the Jewish laws considered a rabbi, a teacher?—A. I beg your pardon?

Q. I don't know. I want you to tell me.—A. If you will allow me, I will tell you.

Q. Yes.—A. This is our curse in this country, because a man who teaches children, the public being ignorant a little in the religious knowledge, so they call him rabbi. One who is performing a wedding ceremony, they are calling rabbi. So I wouldn't know what to say, that we have two kinds of rabbis. It is not allowed to call a person rabbi unless he is ordained and that is what I say. This is the curse in your country. It is only in America. In Europe, it couldn't happen there.

Q. Let me ask you this. Is there a ritual that a person has to go through to become an ordained rabbi?—A. A ritual?

23 Q. Yes; that a person has to go through in order to become an ordained rabbi?—A. Positively.

Q. Could you tell me what ritual he has to go through?—A. Well, we have, like I mentioned before, a Shulchan Oruch. There is four kind of books which deals with all works of life. For instance, we have one book concerning the divorces, marriages, which this book we call Eben H'ezer. It is known as this book. It deals with these problems. We have books of Chosen Mispat. It deals just about things that concern business; money matters. And we have a Yoreh Eah. It consists of what is kosher, what we are allowed to do, what we are not allowed to do. We have another book, which is Orach Chaim, regular routine of life; for instance, how to write, you know, how to conduct a funeral, how to make a blessing on wine and bread, how to observe the Sabbath. So to go through as a rabbi you must at least know a good part of these books, the code of law, what we call.

Q. Let me ask you this question and I will be through with you. Is it not possible for a person who wants to be familiar with the Talmud and the laws of Judaism to go to the Mesifta Seminary without intending to be an ordained rabbi? Do you understand my question, Rabbi?—A. I understand that question, but it is very hard for me to answer this question. I will tell you why, because, for instance, when we are—for instance, I was a

24 student. When I was a student I didn't think of a career. When I was a student I only have in my mind to sit and study. I didn't think about a career, like here in a college a person is going to take up something. Many people are learning. They are not even thinking of a career. They want to know, until they are completed, to think about a career. So a person can be in the school and he might not think what he will be. He might not think at all about this question. So this is a matter that concerns a person's feelings.

Q. I understand. Let me ask you this, and I ask you this because I believe it is important to a fair determination in this case.—A. All right.

Q. Is there any pledge or any oath required from any student matriculating in the Mesifta Seminary?—A. Matriculating? What is this word?

Q. Registering; taking up a course in the Mesifta Seminary; required of any person indicating his intention that he is pursuing the studies for the purpose of becoming an ordained rabbi?

Mr. Eichler. Now, wait a minute, Rabbi. The only reason I am filing an objection to that question, if your Honor please, is that we have the dean or registrar of the Mesifta Talmudical

Seminary here, who I believe is the only man competent to answer that. Rabbi Weller is not attached to that seminary.

25 The COURT. Well, if he can't answer the question, if he doesn't know definitely, then he should say he can't answer it, and if he can answer it, of course he may proceed.

Mr. EICHLER. Well, I have no objection. Of course, we have the competent testimony.

A. I don't know the procedure.

The COURT. He says he doesn't know. There is another man here who is qualified to answer that question. He says he can't answer it.

Q. Rabbi Weller, could you tell me this? Has any rabbinical school anywheres, whether in the United States or any other part of the world, ever excluded as a student in their seminary a person who had no desire to study the Talmud or the rabbinical laws for the purpose of becoming an ordained rabbi? Can you answer that question?—A. Make me clear. For instance, if the institution feels that the student don't want to be a rabbi, they expel him for it? Is that your question?

Q. No. Whether they take him in to study.—A. Will they take him in to study?

Q. Yes. Suppose, let me put it on a practical basis. Suppose I were of the Jewish faith and I should go to any rabbinical seminary and state to the persons in charge of this seminary

26 that I want to pursue this course of study for the purpose of acquainting myself with the rabbinical laws and the Talmud, for purposes of enlightenment but not for purposes of becoming an ordained rabbi. Would I be permitted to pursue those studies.—A. You would be permitted, but I don't think they would bother with you to learn to you the code of the law.

Q. I would be permitted to study?—A. To study the Talmud; yes.

Mr. STANZIALE. No further questions.

Mr. KREEGER. That is all.

SAMUEL QUINN, called and affirmed on behalf of the petitioner, testified as follows:

Direct examination by Mr. KREEGER:

Q. Rabbi Quinn, are you associated with Mesifta Talmudical Seminary?—A. Yes, sir; I am.

Q. In what capacity?—A. I am the registrar and the assistant to the Dean.

Q. How long have you been so associated with the Mesifta Talmudical Seminary?—A. Since 1935.

Q. Do you know the petitioner, Jacob Saimuels?—A. Yes, I do.

Q. How long have you known him?—A. I have known
27 him at least twelve years.

Q. Do you have with you his school record at the Mesifta Talmudical Seminary?—A. No, I don't.

Q. Do you know his record?—A. Certain parts of the record I do know.

Q. Was he an enrolled student at the Mesifta Talmudical Seminary?—A. He was.

Q. Between what years?—A. Between September 1933 and up to the time of his induction into the Army, which was quite recent, with the exception of a period of approximately two years when he was out of the school. That period was approximately between the end of 1939 and sometime in 1941, I guess.

Q. Do you remember if that was September 1941?—A. Well, I couldn't say accurately. I believe the record shows it.

Q. You mean the record of the local board?—A. The record of the local board; yes.

Mr. STANZIALE. Are you using the record?

Mr. KREEGER. Well, I may have to take out certain records.

Mr. STANZIALE. Very well. Then I will look at it afterwards. Go ahead. You use it.

Q. And is Jacob Samuels still carried on the records of the school?—A. Yes, he is. He is on leave in the United States Army.

28 Q. And according to the records of your school and the record of standing of the student, when was it expected that Jacobs Samuels would be ordained?—A. Well, in rather a relatively short period.

Q. How long?—A. Approximately about a half a year.

Q. Would you say that in June or July 1945?—A. Approximately.

Q. Rabbi Quinn, I show you a letter of August 20, 1942 and ask you whether that is your signature.—A. Yes, it is.

Q. I also show you a letter dated October 19, 1944 and ask you whether that bears your signature?—A. Yes, sir.

Q. Will you please explain to the Court the facts and circumstances concerning those two letters that were sent to the local board?—A. The first letter reads—the first letter is addressed to Local Board No. 193 regarding Jacob Samuels, whose order number 11,279, and it reads as follows: "Dear Sirs: Kindly be informed that the above named registrant is a day student in our seminary and attends classes thirty-four hours a week. He entered our rabbinical division in September 1937 and will probably graduate in 1945."

Signed, "Rabbi Samuel Quinn, assistant to the dean."

Now, there is a postscript to it, which is also signed by me. The

postscript reads as follows: "Mr. Samuels has been attending our school system since the age of six. He graduated from our
29 eight-year elementary course and from our four-year pre-rabbinical course. Upon his completion of the latter division he was admitted to our rabbinical division in September 1937. After having attended for two years he left the school in June 1939 to seek employment. In September 1941 he returned to our evening division, and in July 1942 he was transferred to the day session." Signed by Samuel Quinn.

Q. What is the date of that letter?—A. The date of that letter is August 20, 1942.

Q. Shortly after August 20, 1942, was the matter of that letter called to your attention, particularly with reference to the phrase, "to seek employment"?—A. Well, I don't know whether it was shortly after, but sometime after writing that letter it was called to my attention.

Q. Did you check into the records to see whether that was correct?—A. Yes, I did.

Q. What did you find, Rabbi Quinn?—A. I found that the student was not well for quite a while previous to his leaving the school in 1939, and not only was the student examined by his own private doctor, under whose care he was for a long time, but he was also sent by the school proper to a specialist in order to be examined and his condition to be——

Q. Diagnosed?—A. Diagnosed, and he left the school, not in order to seek employment, but he left the school because the doctor advised him to stop studying for the sake of his health. It
30 was only at a subsequent time that it was the doctor's advice that he should indulge in some physical form of occupapation, and that is why, that was the primary reason why he undertook to work.

Q. Is that how you got the idea that he had left to seek employment, because actually he did some work afterwards?—A. Actually he did some work.

Mr. STANZIALE. I object to that. I think that question is very leading, very leading now. I have not objected to the previous testimony, which is hearsay, what he has stated before.

The COURT. Since he has given all of that hearsay, I will permit him to answer this question.

Mr. STANZIALE. All right, Judge Rice.

Mr. KREEGER. There is no jury here.

The COURT. It is before the Court anyway.

Mr. KREEGER. It is part of the record, your Honor, which will eventually be offered.

The COURT. It is what?

Mr. KREEGER. I say, it is part of the record which will eventually be offered. Anyway, these letters were.

(The last question is read.)

A. Yes. I personally knew of the fact that he was working and I had thought that it was the doctor's first recommendation that he go to work rather than to stop all occupation
31 whatsoever, but it was later affirmed that the doctor's first advice for him was to stop everything, have complete rest, not only physical but also mental.

Q. I call your attention to the further letter to the local board and ask you the circumstances as to how that came to be written.—A. Well, the registrant evidently was called before the local board, and when he closely examined his file he found that there was an inaccuracy in my letter as to two respects; first, that he did not leave the school in June 1939, and the second one was the matter, of course, of his leaving the school, which I alleged was to seek employment; and calling that to my attention, I further investigated. I asked the instructors under whom the student studied. As is customary in our school, the student and instructors are rather intimate, and the students confide to their instructors all problems which concern them, not only regarding their career and studies but also personal matters as well, and I found that the student—First of all I found on the record that the student left in October 1939.

Q. How did you come to say in the earlier letter that he left in June 1939?—A. Well, the period, when I stated that he left in June 1939, since that is the end of the year, 1938–1939 academic year, which the student actually completed, whereas the beginning of the 1939–1940 *aca*demic year, which he had only begun
32 but did not even complet' halfway. He was not credited for that year but actually the student did attend until October 1939.

Q. Did you make any further correction in your letter of 1944?—A. I made the second correction regarding the matter of employment, and I state in the letter that his leave in 1939 was taken because of poor health and not to seek employment, as I stated. The error arose from the fact that three years later in August 1942 when I wrote the letter during the summer vacation, the school authorities to whom he had spoken were not available, and I assumed that he left to seek employment because I had heard that he was employed in 1941 and part of 1942, when he was attending our evening session. However, I have since spoken to Rabbi Rivkin, who acted as the registrant's faculty adviser in 1939, and he tells me that the application for leave was on the ground of ill health and not to seek employment.

Mr. KREEGER. Your Honor, I offer the letter of August 20, 1942,

from the Mesifta Talmudical Seminary to Local Board 193 as relator's exhibit.

Mr. STANZIALE. If your Honor please, those exhibits are already in evidence. They have been made a part of my return.

The COURT. They constitute a portion of the response here, and I take it that all parts of the file are in evidence. You may
33 formally offer any part of it that you want to.

Mr. KREEGER. We should like to offer these. We may have an objection to a certain part of the file, your Honor, although it is part of the local board record, and with your Honor's consent I would like to offer these separately, if you have no objection.

The COURT. They will be admitted.

(The letters referred to are marked "Exhibits P-1 and P-2.")

Mr. STANZIALE. May I, for the sake of keeping the file in order, request the Court that those particular exhibits be kept with the selective service file?

The COURT. Yes. They are also part of the government's exhibit, but they have been selected and offered separately by the defendant. It is allegedly shown that they are a part of the government's file and a part of the government's exhibit in the case.

Mr. KREEGER. Of course on the record the government has not offered the exhibit yet. I suppose Mr. Stanziale will do that.

Mr. STANZIALE. It has been offered with my return. It becomes a part of the record.

The COURT. I find that attorney generals do not agree on whether an exhibit is in evidence or not, but I so consider it.
34 When the attorney files an answer and the exhibits are attached to it and he makes it part of the evidence, I consider that in evidence myself.

Q. Now, Rabbi Quinn, I understand from you that the relator attended the parochial school, Yeshivah Torah Vodaath; is that correct?—A. Yes.

Q. And did I hear you state that he completed that in 1933?—A. Yes.

Q. Did he enter the prerabbinical course given by the Mesifta Talmudical Seminary?—A. Yes. The entire course, both what is called prerabbinical and rabbinical, is one integrated course. It is not something preparatory in the sense that it is a subject different from what is studied in the rabbinical course, but it is actually the same subject matter and taken up, of course, in a more——

Q. Elementary way?—A. Elementary manner.

Q. And did the relator, Jacob Samuels, complete the prerabbinical course?—A. Yes, he did.

Q. And was that in 1937?—A. Yes.

Q. And did he enter the rabbinical course in 1937?—A. Yes, he did.

Q. Did he continue at that course until October 1939?—A. Yes, sir.

Q. When he left in accordance with the explanation in these letters?—A. Yes.

35 Q. And when he returned in 1941, did he return to the rabbinical department?—A. Yes, he did; but to the evening session.

Q. But that was a part of the rabbinical school?—A. Yes, sir.

Q. Did he return to the day session at any time?—A. Yes, he did.

Q. When?—A. It is given in the letter.

Q. It is given in the letter as in July 1942. Do you want to see the letter to refresh your recollection?—A. Yes, please. In July 1942.

Q. And from July 1942 down to the date of induction in December 1944, did Samuels continue as a full time student?—A. Yes, he did.

Q. Did you during those years that we have referred to from 1937 on have occasion to talk to Samuels as a student of the Mesifta Talmudical Seminary?—A. Yes.

Q. And did he discuss with you his personal problems and aims and aspirations?—Yes, he did.

Q. And did he have any talk with you as to what his aim in life was?—A. Yes. He told me that his purpose in attending the Mesifta was in order that he should be ordained and practice the rabbinate.

Q. Was that a single conversation?—A. No.

Q. Or did you have a number of conversations with him over the years?—A. Several.

36 Q. Does the relator live in the vicinity of the rabbinical seminary?—A. Yes.

Q. Would you say a short walking distance?—A. Yes. About ten minutes walk from the building.

Q. After 1937, when he entered the higher rabbinical department, about how much time did he spend per day in the rabbinical seminary?—A. The full time session is from nine to five-thirty that every student is required to attend.

Q. And at that time was it part of your function as registrar to see the students frequently?—A. Yes; rather frequently.

Q. Would it be possible for a student to attend at his classes and for you not to see him, say, once a week?—A. No. I would see him almost every day. I wouldn't interview him every day, but I would see him because it is part of my function to enter the

classroom daily, or almost daily, for purposes of checking up on the attendance and sometimes for other reasons, as the occasion may arise.

Q. And in the course of those years can you give us any idea as to how frequent your personal interviews with Samuels were, going back to 1937?—A. I wouldn't recall how often we had formal interviews, but I saw the student, as I said before, almost daily, and I would speak to him very often. I mean, I would see him not only during school days but also on Saturdays
37 when there were no classes, and we would meet in the synagogue, in the study room, and of course there were always informal discussions between students and whichever members of the faculty are available as far as subject matter is concerned and other problems.

Q. As a student who lived in the immediate vicinity of the seminary, did you have a better opportunity to know about his aims and aspirations than perhaps about one who lived farther away.—A. Certainly. I would add to that answer that a student living in the immediate vicinity of the school could be observed more closely and I could be convinced more about his intentions more so than for a student who lives at a distance and whom I only meet, so to speak, on a business basis, studies, and examinations, records,—

Q. Now, you have stated heretofore that he was to be ordained in the summer of 1945, either June or July, and you so wrote in your letter of August 20, 1942, marked "Exhibit P-1." Can you tell us what subject the relator still had to complete for his ordination; what subject or subjects?—A. The codes.

Q. And what book is that? What name does that go by?—A. Yoreh Deah.

Q. Was Samuels studying that code at the time of his induction?—A. I guess he was. I say I guess because I don't
38 have supervision. I mean, as far as the studies are concerned, I don't supervise the senior students. I supervise the studies of junior students, and I could say definitely exactly how much the student has covered during a certain period and what he has studies, and so on and so forth, but I have no such knowledge of the senior students. All I know is that at the end of the year the instructor gives me the completed work, the work that is completed by each individual student, which I make a record of.

Q. But you do know this much, that the only subject remaining for Samuels to study before standing for ordination was this book, the Yoreh Deah; correct?—A. Yes.

Mr. KREEGER. That is all. Your witness.

Cross-examination by Mr. STANZIALE:

Q. Rabbi Quinn, how many students have you in the Mesifta Seminary?—A. In the entire system we have today approximately five hundred.

Q. How many senior students have you there at the present time?—A. In the senior division we had on the beginning of the semester 269.

Q. At what age can they enter your seminary?—A. A student at the first time he enters the seminary is on the average of fourteen years old. He enters our seminary when he completes
39 the eight-year course in our elementary division, which is known as Yeshivah Torah Vodaath. A student completing that school does not automatically enter our seminary. He first has to pass an entrance examination, and when he is found qualified he is admitted to the seminary. No further questions are asked as to his purpose, and so on and so forth. He enters the seminary as a student, because when a student is fourteen years old we consider him immature to know exactly what he plans to do and what his aim is, and so on and so forth. A student continues for several years, ranging on his ability. The average student completes what we call the prerabbinical course in three years; the duller student completes it in a period of four years; and at that time he enters what is known as the Beth Hamedrash. A student is on the average of the age of seventeen when he enters that division if he goes along smoothly.

Q. Then I take it that there is ordinarly a three-year prerabbinical course for continuing of studies to become an ordained rabbi?—A. Yes; but I want to make that clear, that it is not a pretheological course as it is understood in the general sense; pretheological. Pretheological in colleges is a secular course in languages and social studies and other subject matter. It is preparatory to a student studying theology; whereas here the student actually studies theological subjects. It is only that it is on a more elementary level.

40 Q. Then how long is the course for the continuance of studies to become an ordained rabbi?—A. On the average of six years.

Q. Now, when a person enters your seminary, let's say at the age of fourteen, is it a condition precedent or is any oath or affirmation required either of the student or his parents or natural guardians that he is entering your seminary for the express purpose of becoming an ordained rabbi?—A. No; there is not. It is merely that we know our purpose but we don't make any such condition.

Q. You have answered my question, Rabbi Quinn. Now, at the conclusion of the three-year prerabbinical course for purposes of

ordination and the continuance to become an ordained rabbi, is there required an oath for affirmation, either by the student or his parents or his natural guardian, that he intends to continue the course for the purpose of becoming an ordained rabbi?—A. Well, I will have to set a borderline to that; to the answer.

Q. My question was this——A. I understand the question very clearly, but I want to tell you what I mean. Up until the time that we had a government obligation we did not inquire into the motives of the students' attendance, but after the draft law was passed and the draft law contained a provision that students attending a recognized theological school with the purpose of
41 becoming ministers of religion should be exempt from draft, from that time on we made it a point that we do not admit a student into that senior division unless he expressly states his desire that he wants to become a rabbi.

Q. Then I understood you to say that Mr. Samuels began his studies, or the advanced studies, let's call it, in 1937?—A. Yes.

Q. So that at the time that Mr. Samuels began these advanced studies there was not required of him, nor was it made a condition precedent by your institution to continue his studies, that he was doing so for the express purpose of becoming an ordained rabbi; is that correct?—A. That is correct.

Q. Very well. Now, you have mentioned, I believe, during your direct examination, about certain records. Do you have those records with you, Rabbi Quinn?—A. No.

Q. Were you asked to bring them?—A. No; I was not asked to bring them.

Q. I understand. All right. Now, Rabbi Quinn, I am particularly interested in the letter dated August 20, 1942, that particular part which is referred to as the postcriptum, in which you say that Mr. Samuels has been attending your school system since the age of six, that he graduated your eight-year elementary course and from your four-year prerabbinical course, as you have
42 already related on my cross-examination, and you further state that he entered the latter division in September 1939.—A. In September 1937.

Q. Or 1937. I am sorry, sir. And that he then left for two years in June 1939 to seek employment, and in September 1941 he returned to your evening division, and in July 1942 was transferred to your day division. Could you tell me if at the time that you sent this letter to the draft board you referred to any records?—A. I suppose I did because I wouldn't write the letter from memory. I surely did.

Q. Can you tell us to the best of your recollection, Rabbi Quinn, if before coming to court you referred to the record from which you received the information wherein you wrote the letter the contents of which I have just read to you?—A. Yes, I did.

Q. And does your record contain the same information that is contained in the letter?—A. No; it does not.

Q. It does not?—A. It does not.

Q. Now, on October 19, 1944 you wrote a letter to the draft board again?—A. Excuse me. I want to explain what I mean, it does not. It does not contain that he left the school in June 1939, but it does contain that he was credited with his work.

Q. I understand that. Where did you get that information from if the record does not contain that, Rabbi Quinn?—A.
43 The record does contain that he was credited with his——

Q. No; not that, Rabbi Quinn. In reference that he left the school in June 1939 to seek employment.—A. To seek employment?

Q. Yes.—A. Well, seeking employment was from my own knowledge. It is not shown anywheres. Our record card does not provide any space for the reason or the occupation of the student after he is dismissed from the school.

Q. Well, he was not dismissed from the school, was he?—A. Well, that is also a thing which we have only one section for, the time that a student ceases to attend. We mark down that date.

Q. What does your record show as to why the student in this particular case left in June 1939?—A. It shows no reason at all.

Q. Where did you get the information from?—A. From my own knowledge.

Q. From your own knowledge. I see.—A. Yes. I have known the student personally.

Q. I understand that. Now, you then state in your letter of October 19, 1944, approximately two years after, that there was an error in the letter that you sent on August 20, 1942. Now, where did you get the information to bring it to your attention that you had committed an error in your letter of August 20,
44 1942, so as to correct it in your letter of October 1944?—A. The date is on the card. The date of leaving is on the card. As to his reason for leaving, he had Rabbi Rivkin—rather, I spoke to Rabbi Rivkin and I also saw the letters from the doctor under whose care the student was at that time.

Q. So that the contents of your letter of October 19, 1944 are not based on any personal knowledge that you have but on information that you received from Rabbi Rivkin and on information that you received from the attending physician, is that correct?—A. No.

Q. Is it not?—A. Not entirely.

Q. Would you correct me then?—A. Yes. I know that the student was unwell in 1939. As a matter of fact, as I said before, the school had sent him to its own doctor for physical examination and I personally accompanied the student to that doctor at the time he was examined. So I knew that the student was not well, but it

was my impression that his doctor at that time had advised him to engage himself in some physical occupation, and that is why I put down that he went out to seek employment, but later I was corrected on that. The doctor's first advice had been that he do nothing at all, neither study nor work, but to take complete rest. It was only at a subsequent date that the doctor recommended for him to work.

Q. So that, Rabbi Quinn, you had that information at the time you wrote the letter of August 20, 1942?—A. Yes; but
45 I had thought that the doctor's advice was that he go to work immediately.

Q. And then of course two years later you remembered that you had——A. No; I did not remember. Two years later I found out that the doctor did not advise him to go to work.

Q. Did you know, Rabbi Quinn, that in 1940 this young man worked as a shipping clerk?—A. Yes.

Q. That was against the doctor's orders, was it not, from what you understood?—A. I understood that those were the orders of the doctor. That is why, because I knew. As a matter of fact I once entered the place where he worked and saw him working there.

Q. Did you know, Rabbi Quinn, that he worked in 1940, he worked in 1941, worked all of 1941, and that in 1942 he worked during the day and then started his studies in the evening?—A. I wouldn't——

Q. You don't know that?—A. No.

Q. You can't tell us, Rabbi Quinn, whether at the time this relator left your institution in June of 1939 or September—it makes no difference; only two months—whether he at that time gave you the information or stated to you that he was discontinuing his studies in order to pursue an occupation?—A. Well, frankly I don't recall that the student spoke to me personally
46 to tell me that he left. I know that he spoke to my superior, Rabbi Mendlovitz, and I mean as far as I could recall at this time, the information that I received was from Rabbi Mendlovitz that he is discontinuing study. I know the student had discontinued. I know that he was not attending, but that he had actually discontinued his studies, that information I received from Rabbi Mendlovitz, who was the dean of the school at that time, and not from him direct.

Q. You see what we are concerned with in this particular case is whether he pursued his studies again in 1942, when the draft law had gone into effect. That is what we are concerned with in this particular case. There is one more thing. Going back to the students who have come into your school, has any student been

denied admission to the Mesifta Seminary who has stated that he was pursuing a course of studies for the purpose of enlightenment and not for the purpose of becoming an ordained rabbi?—A. Since the draft law has been enacted——

Q. No, no. Before.—A. Before the draft law has been enacted?

Q. Before October 1940, when the draft law went into effect.—A. No.

Q. Have any students been excluded or denied admission to your seminary if they have stated that they did not intend to become a practicing rabbi?—A. Yes, sir.

Q. Who? Do you know of any names?—A. Yes. I
47 could mention some offhand.

Q. I mean, would it be too much trouble?—A. No. I could mention some.

Q. Who?—A. Binyamin Labovitz.

Q. Can you tell us approximately when?—A. About a year ago.

Q. Was that determined upon the fact that they were not scholastically qualified?—A. No. He was rather a good student; an excellent student. He made very rapid progress, but he told the dean that he did not intend to become a rabbi and the dean told him, "Then it is your duty to notify the draft board," and the dean instructed me to correspond with the draft board, which I did.

Q. Under these circumstances of course no action would have been taken here before the draft laws went into effect?—A. No.

Mr. STANZIALE. I don't think I have any more questions to ask Rabbi Quinn with the exception of one one that point.

Q. Rabbi Quinn, you appeared, did you not, with the relator in this case before the draft board?—A. Yes.

Q. Before he was inducted in the United States army; is that correct?—A. Yes.

Q. And you have given substantially the same testimony?—A. Yes.

48 Q. As you have been giving here today?—A. Yes.

Q. And these facts were developed before the draft board; is that correct?—A. Yes.

Q. And after your appearance before the draft board and after their consideration of what you have given, a notice of induction was sent to the relator to report for induction, which I believe was——

Mr. EICHLER. Just a minute. I object to that as asking the witness for a conclusion, because if your Honor will recall, the question involves after the draft board gave consideration to what you said, that the draft board did such and such a thing. We object to that on the ground that it calls for a conclusion on the part of this witness. We don't dispute the record, or, rather, the witness testifies that, "I appeared before the draft board and substantially

gave the testimony that I have given today," period, and that is the end of it, and I object to anything else.

The COURT. Well, I don't want him to say that the draft board gave consideration to the testimony.

Mr. EICHLER. That is right, sir.

The COURT. I wouldn't consider that he could tell me that even though it is included in the question, but in order to eliminate that possibility, just confine it. Was it after you appeared
49 before the draft board that the order for induction was made, and if so, how long after?

Mr. STANZIALE. That is just what I had in mind, Judge Rice.

The WITNESS. Well, Your Honor, I really don't know whether the order of induction was mailed before I had appeared before the draft board or after I had appeared.

The COURT. How long after you appeared before the draft board was it that you learned that the boy had gone into the army?

Mr. STANZIALE. Your best recollection.

The COURT. You don't have to be exact, but was it weeks or months, or days?

The WITNESS. I think it was a matter of days.

Mr. EICHLER. Will this help? As I understand it, the boy was inducted on the 20th of December or around that time.

Mr. STANZIALE. The 26th.

Mr. EICHLER. The 26th. Rather, the order was issued apparently the 20th. Can you with relation to the 26th of December 1944 give the Court some idea as to when you appeared before the draft board?

The COURT. Doesn't the record show when he appeared?

Mr. STANZIALE. Yes; it does.

The COURT. Is that all?

Mr. STANZIALE. That is all, Judge Rice.

50 Redirect examination by Mr. KREEGER:

Q. Just one point, Rabbi Quinn. Samuels did return to the Seminary in July 1941?—A. Yes.

Q. And that was to the rabbinical seminary?—A. Yes.

Q. Not to the prerabbinical course?

The COURT. Was that 1941 or 1942?

The WITNESS. 1941. He came back to the evening session in 1941 and entered the full-time day session in 1942.

The COURT. Well, on that point, when does your scholastic year begin and end? Do you stay in session all the year?

The WITNESS. We are in session all the year. We are in session all year, your Honor.

The COURT. You don't have nine months' study and three months' vacation?

The WITNESS. No. We used to have a vacation, but the selective service from Washington gave us an order to be in session with no vacation at all; no summer vacation anyway.

The COURT. The Court will now recess until two o'clock.

(At twelve-fifteen o'clock P. M. a recess is taken until two o'clock P. M.)

51 AFTER RECESS

Mr. EICHLER. If your Honor please, during the recess hour we attempted to contact a Doctor Hertz, a practicing physician of New York City. He was the attending physician to this boy and he directed him to discontinue his studies in 1939. My colleague here, Mr. Kreeger, was able to reach the doctor on the telephone and you know doctors are very busy nowadays. With so many of them in the military service, very few are left for private civilian practice. At any rate, we received assurance from the doctor that he would arrive here by between three and three-fifteen. Now, we are confident that we will take up that time with other witnesses.

The COURT. I will wait for him.

Mr. EICHLER. Thank you.

MOSHE B. RIVKIN, called and affirmed on behalf of the petitioner, testified as follows:

Mr. KREEGER. I believe Rabbi Rivkin has not a full command of the English language and I may have to be a little slow or patient with him.

The COURT. All right.

52 Mr. KREEGER. With your Honor's permission.

Direct examination by Mr. KREEGER:

Q. Rabbi Rivkin, are you a teacher at the Mesifta Talmudical Seminary?—A. Yes.

Q. Were you a teacher at that seminary between 1937 and 1940?—A. Yes.

Q. And since that time have you continued to be there, a teacher down to this day? Are you still a teacher there today?—A. Yes.

Q. Do you teach Talmud?—A. Yes.

Q. At the seminary?—A. Yes.

Q. Do you know Jacob Samuels?—A. Yes.

Q. Was he a student of yours in the seminary?—A. Yes.

Q. And was he a student in your class between the years 1937 and 1939?—A. Yes.

Q. Did he have a conversation with you in 1939 about leaving the school for a time?—A. Yes.

Q. Can you tell us what he said to you as to why he was leaving?—A. Yes. Aug Yiddish?

Mr. KREEGER. We have no interpreter here.

The COURT. Can you interpret?

Mr. KREEGER. Oh, yes, sure; if your Honor will permit me to.

Mr. STANZIALE. I have no objections.

53 The COURT. You let him answer in Yiddish and you translate.

Mr. KREEGER. And I will translate.

The COURT. All right.

(From this point on the testimony of this witness is taken through Mr. Kreeger acting as interpreter.)

A. He told me towards the end of 1939 that he wasn't feeling well, and I had noticed before in the course of his studies that he wasn't feeling well, and I told him that he should go to a doctor. He told me that he did go to a doctor and the doctor advised him to leave off studying for a short time.

Q. And did he leave the school at that time?—A. Yes.

Q. Before he left the school was he in the Beth Madrash?—A. He was being admitted to the Beth Madrash in 1939.

Mr. STANZIALE. I understand that he said the end of 1939.

Mr. KREEGER. That is what I said; that he was to be admitted the end of 1939.

(The last answer is read.)

Mr. KREEGER. At the end of 1939, he said. I wouldn't dare mistranslate, your Honor, because there is quite an expert in Yiddish sitting at the table here.

Mr. STANZIALE. You don't mean me.

54 Mr. KREEGER. No, no. Right alongside of you.

Mr. EICHLER. Why doesn't he act as interpreter then?

Mr. STANZIALE. No, no. That is all right.

The COURT. No question about it. Either answer would have been about the same; except the way it was finally given was more specific than the other.

Mr. EICHLER. I suggest, your Honor, that Rabbi Quinn interpret. I think it is too much of a load for counsel to ask questions and then try to interpret the witness's answers.

The COURT. I don't think anybody is objecting to his doing it, but you may make the change if you want to.

Mr. STANZIALE. I have no objections as to who is called. I would like to be agreeable in every way possible.

Mr. EICHLER. Go ahead.

Q. For the year or two before he left in 1939, about how many hours a day did he devote to studying rabbinic subjects?—A. Before 1939?

Q. Yes. Before he left in 1939, about how many hours a day did he devote to studying rabbinic subjects?—A. The whole day.

55 Q. What subjects was he mainly studying?—A. The main subject, Talmud and Shulchan Oruch.

Q. Did he study Talmud at that time with the various commentaries?—A. Yes.

Q. For how many years had he been studying the Talmud intensively before 1939?—A. He learned with me for two years and before that he learned it in the other classes.

Q. Is the study of Talmud in its advance courses a study that will take all of a man's mind and attention?—A. Surely.

Q. Does it happen sometimes that a student who is devoting himself to advanced courses in rabbinics and Talmud suffers physically as a result?

Mr. STANZIALE. That is objected to, Judge Rice.

The COURT. I don't see where that would make any difference. He said it takes intense study.

Mr. KREEGER. Very well, your Honor, I withdraw the question then.

Q. When this student, Jacob Samuels, was in your class in 1937, 1938, and 1939, how many hours a day did he devote to the study of Talmud?—A. It means from nine in the morning to five or six in the afternoon.

Q. Did he devote any evening hours, to your knowledge, to the study of Talmud and rabbinics at that time?—A. I do not know definitely, but I think so.

Mr. KREEGER. Your witness.

56 Mr. STANZIALE. Do you mind interpreting for me?

Mr. KREEGER. Yes, surely. I will be delighted to. Just one more question.

Q. In 1941, when Samuels returned to the school, you were no longer his teacher?—A. No.

Mr. KREEGER. I am ready to render my services.

Cross-examination by Mr. STANZIALE:

Q. Rabbi, is it not a fact that the courses at the Mesifta Seminary are not restricted to students who specifically plan to become practicing rabbis?—A. That is not so. Especially at this Mesifta a boy who enters, it is for the purpose of becoming a rabbi. A student of the parochial elementary school, the Yeshivah, who does not have any intention of becoming a rabbi and studying for the rabbinate, goes to other places and does not go to the Mesifta Talmudical Seminary. Especially in that age from seventeen, eighteen, a boy, and the more so in cases of boys who are seventeen or eighteen years of age, if they stay on at the Mesifta Talmudical

Seminary, they stay on for the reason that they intend to make the rabbinate their profession. They study for the rabbinate. Otherwise they go away.

Mr. STANZIALE. Will you tell the rabbi that my question specifically is directed to this particular point? I don't think his
57 answer is responsive, in that my question was whether any of the courses are restricted to students who are specifically planning to become practicing rabbis. That is my question. Are the courses restricted to those people, or can other persons come in and take the courses?

Mr. KREEGER. Now, you will have to be easy with me. I will ask one question at a time.

The WITNESS. In the Mesifta there are to be found only students, and if he is studying there it means for the rabbinate.

Mr. KREEGER. I think I can clarify it for you in a minute.

The district attorney did not ask you that. Are the courses at Mesifta limited to be given only to students who wish to become rabbis, or can any students take the courses? I believe that is the intent of the question.

Mr. STANZIALE. That is the question.

The WITNESS. It is theoretically possible, but practically it cannot be done, but all students studying at the Mesifta are studying for the rabbinate, because for ordinary Jewish education he has enough up to Mesifta and then he leaves if he is only interested in general education.

Q. That is not my question. My question is at this
58 particular time were the courses restricted only to those persons seeking ordination as a rabbi?

The COURT. What do you mean by "This particular time"?

Mr. STANZIALE. At the particular time before October 1940.

Mr. KREEGER. Before October 1940.

Mr. STANZIALE. Yes.

Mr. KREEGER. Your Honor, we already have that in the testimony. The registrar testified that before 1940 they were not restricted. It is only since the selective service came in. That is in the record. That is already in the record. The registrar testified to that.

Mr. STANZIALE. All right.

Q. Now, I take it that a student would not be excluded who desired to study the Talmud not for the purpose of becoming an ordained rabbi?

Mr. KREEGER. You mean now?

Mr. STANZIALE. Yes.

A. I do not know. That is a problem for the management of the institution.

Q. But it was definite that a student would not be excluded before October of 1940 to study the Talmud?

Mr. KREEGER. Your Honor, I submit on that question
59 that he has asked it before in another form. The registrar has already testified, and this man, who is not a teacher, would not be the man to testify to that.

The COURT. They seem to want him to.

Mr. KREEGER. All right. Will you read the question for me?

(The last question is read.)

Mr. KREEGER. If he was not studying for the rabbinate. Is that the end of your question?

A. I think so. It is possible. Possibly so.

Mr. KREEGER. The witness would like to add something, your Honor.

A. (Continuing:) Factually for the information of the district attorney in response to his question, boys above the age of seventeen who are studying at the Beth Madrash all have the intention of becoming rabbis. Otherwise they either leave when they complete the elementary parochial school at the age of thirteen or fourteen or when they reach the age of seventeen, because by then they have obtained enough education.

Q. That still doesn't answer my question. I want to know if a person wants to study the Torah Lishma, whether he would excluded or restricted?

Mr. KREEGER. You mean without aiming for the rabbinate?

60 Mr. STANZIALE. That is right.

A. I cannot say definitely, but I think the answer is no. In addition to that, I don't think anybody now appears or at any time has appeared who walked in and said that he merely wanted to study the Torah Lishma.

Q. But if somebody walked in and wanted to study the Torah Lishma, he wouldn't be excluded or restricted before October 1940?

Mr. KREEGER. I object to that, your Honor. The witness has just said that there has been no such case and this would be theoretical; suppose a man did appear.

Mr. STANZIALE. He gave a theoretical answer before, your Honor.

The COURT. I would like to know his answer.

Mr. KREEGER. Yes; surely.

The COURT. Let him answer.

A. At that time possibly yes. I do not know.

Q. All right. You have answered my question now. In 1939 I believe you testified that the relator became ill and discontinued his studies. Would you tell us, Mr. Witness, whether the relator told you at that particular time that he was going to seek employment?—A. My testimony was not as the district attorney

said. My testimony was that he said that the doctor had told him that he was sick and that he should take a rest or a leave,
61 and that he wasn't feeling well and that I had noticed that because he had been nervous before.

Q. Can you tell us, Rabbi Rivkin, whether the rest was in the nature of complete rest in the absence of any physical exertion?—A. I understood that it meant a full rest and that he was to do nothing.

Q. Now, do you know, Mr. Witness, that in January of 1940 the relator was employed as a shipping clerk for the full year of 1940 up to and including the year of 1942?—A. I do not know exactly what kind of work he did, but I know that sometime after leaving he came to see me and told me that the doctor instructed that he do some physical work.

Q. Did you know that the relator filed under the social security laws and obtained a social security number in connection with his work?

Mr. KREEGER. Instead of "relator" I am using the name "Samuels." You are referring to 1941, I take it.

A. I don't know that.

Q. Can you tell us why it was that in July of 1941 Mr. Samuels came back to evening class, and remained from the school from the time he left in June of 1939?—A. Because he wanted to continue his studies after having interrupted them in the middle.

Q. Did you ask the relator why it was necessary to remain
62 away approximately two years and two months?—A. I didn't ask him. That was not within my province.

Q. Did he ever tell you why it was necessary to remain away for a period of two years and two months?—A. He didn't have to tell me because I knew myself from the previous time that the doctor told him to take a rest and that afterwards the doctor advised him to go to work.

Q. Did either the doctor or Mr. Samuels tell you how long the doctor said he had to take a rest?

Mr. KREEGER. By rest you mean away from school?

Mr. STANZIALE. Yes.

A. No. That he never told me.

Q. Did you communicate with the doctor and ask the doctor how long it would be necessary for Mr. Samuels to remain from the school?—A. No.

Q. Did you give Mr. Samuels any suggested lessons to take at home while he was away from school during this period of time?—A. No.

Q. Did Mr. Samuels ask for any suggestive course of study while he was away from school during this period of time of two years and two months?—A. He never asked me what subjects to

study during that time, but he came in to ask me frequently questions in connection with matters that he was studying.

Mr. STANZIALE. That is all.

The COURT. I wish you would ask him one question.

63 Mr. KREEGER. Yes; surely, your Honor.

The COURT. This goes to the requirements for study. Do you require a student enrolling in the Mesifta Talmudical Seminary to make any statement concerning his intentions to be a practicing rabbi upon completion of the work, or do you assume that to be his intention by reason of the fact that he enrolls for such work?

The WITNESS. In the oral conversation that is had with the boy upon being admitted to the seminary. There is no written statement signed, but there is an oral interview, and in this oral interview the conversation is concerning his studies and whether he intends to study for the rabbinate and that the subjects all lead to the rabbinate.

Mr. KREEGER. The sum and substance of his answer—Well, I don't know if your Honor wants me to go on from this point.

The COURT. My point is this.

Mr. KREEGER. Perhaps another question might clarify it.

The COURT. Why ask him if he intends to study for the rabbinate since that is the only thing they teach in that school?

Mr. KREEGER. There is another course they teach in that school.

64 The COURT. They can get another degree in that school?

My point is this. When I enrolled in law school, they didn't ask me if I intended to practice law. They assumed that. If I enrolled there, they had a right to assume that I intended to practice law.

Mr. KREEGER. In spite of the fact, your Honor, that a man might drop out at the end of the first year?

The COURT. My question is this, and I am not questioning their faith about the matter. I am wondering if they don't have a right to assume and act upon that assumption, that anyone who asks to be enrolled in that school intends to become one.

Mr. KREEGER. That has been the testimony of the registrar and the testimony of this gentlemen. Prior to 1940, your Honor, no questions were asked as such. No statement was required, and they assumed that a man who entered was studying for the rabbinate. Because of the selective service regulations since 1940 they make it specifically a point to ask whether he is studying for the rabbinate or whether he is not, because they have to certify to the

local board. That has been the change, as I understand it from the testimony of the registrar. If your Honor wants me to——

The COURT. No. That is sufficient. It is just going over the same thing that has been gone over.

65 Mr. KREEGER. Your witness.

Mr. STANZIALE. May I ask Rabbi Rivkin to come to the stand for one minute? I think your Honor will be interested in this; or maybe Rabbi Quinn would probably be better for the purposes of this question.

SAMUEL QUINN, recalled, testifies as follows:

Cross-examination (continued) by Mr. STANZIALE:

Q. Rabbi Quinn, can you tell us whether the Mesifta Talmudical Seminary ever ordained any rabbis prior to 1942?—A. Certainly.

Q. Prior to 1942?—A. Certainly.

Q. Can you tell us when?—A. I received my ordination certificate in 1934.

Q. In 1934?—A. And there was a graduation before my group.

Q. Before your group?—A. In 1932 or 1933.

Q. Can you tell us when they started issuing certificates?—A. 1932 or 1933.

Q. Continuously each year?—A. Surely. Well, I wouldn't say—there was no definite time for graduation, but as a class qualified for ordination they were ordained.

66 Q. Who ordained you, Rabbi Quinn?—A. A group of three rabbis who were appointed by the seminary and who were not connected with the seminary in any official capacity, but who were appointed by the seminary for certain reasons in order that they should examine the students and ordain the students.

Q. Was a certificate issued to you from the Mesifta Seminary?—A. No.

Q. On the stationery of the Mesifta Seminary?—A. No.

Q. Were any of these certificates issued before 1942 to students at your seminary issued by the Mesifta Seminary?—A. No.

Q. Why?—A. Well, it was a question of policy.

Q. So that I am right in assuming then, Rabbi Quinn, that the Mesifta Seminary did not issue the certificates of ordination? Isn't that correct?—A. No. The assumption must be misleading, and I will tell you why. The Mesifta when it was organized had for its purpose to raise the level of the rabbinical ordination in this country. For certain reasons there was rather a looseness in the ordinations and people would practice as rabbis even if they were not entirely entitled to do so, by merely getting a certificate from somewheres. Even certain schools had rather low standards for ordaining rabbis. The Mesifta professed to raise

the standards for ordination, and in order to convince the
67 the public of the bona fide character of its policy, they felt that by calling in outside authorities not directly connected with the Mesifta, people who could not be swayed because of many years of contact with the students, where there are no personal affiliations that would move him to make him ordain any student even if the student were not entitled to ordination, and because of those reasons the committee system of people of authority not connected with the school was found preferable and they were called in whenever there was ordination to be performed. They examined each student individually and they are the ones that signed the certificates.

Q. When has the Mesifta Seminary begun to issue its own certificates or ordination?—A. It was the time after Rabbi Schneider was appointed.

Q. When? What year? It is since 1942, isn't it?—A. Well, let me see. Rabbi Schneider was appointed, I believe, in 1941; I believe he was appointed.

Q. Do you say in 1941 the Mesifta Seminary began to issue its own certificates of ordination?—A. Rabbi Schneider changed the policy.

Q. But prior to that time the Mesifta did not issue its own certificates?—A. No. Rabbi Schneider felt that the reputation of the Mesifta has now been established enough and the people would have enough——

Q. You have answered my question.—A. Reliance on
68 the institution itself.

Mr. STANZIALE. I have no further questions.

Redirect examination by Mr. KREEGER:

Q. Rabbi Quinn, is it not a fact that in orthodox Jewry going back for hundreds if not for thousands of years, no seminary prior to the 20th century issued ordination certificates?—A. As far as I know it is a fact.

Q. To take up just two or three examples, to your knowledge did the Rabbinic Institute of Mir in Poland ever issue its own ordination?

Mr. STANZIALE. I object, if your Honor please, for this reason. We are concerned with this case, with the policy of this institution which this relator was a member or a student of, and I think that the question should be directed to that, and I don't think we should get into thousands of years or hundreds of years ago.

The COURT. Well, I am interested in the matter of history, sir.

Mr. STANZIALE. You are, sir?

The COURT. And I would like to know the answer. I don't think it will help me in answering this question, but I would like to know it. You may answer.

A. To my knowledge it is a fact that the Mir Yeshivah did not issue its own certificates.

69 Q. Hasn't it been the orthodox policy, and I won't mention years, but since time immemorial, that after a rabbinical student or a student preparing for the rabbinate completed the necessary courses for ordination, he went to an outside rabbi outside of his seminary to stand for examination and for ordination?—A. Well, I have seen certificates signed by heads of seminaries too, but not on the stationery of the seminary. I have seen it on their own stationery.

Q. As individuals?—A. But I have also seen certificates signed by rabbis who were not connected with the particular seminary that the student completed.

Q. Now, as to the Mesifta Talmudical Seminary, in your opinion was that institution complying with the orthodox Jewish tradition?

Mr. STANZIALE. I will have to object to that because from the lips of this witness we heard that in 1941 they started to give their own certificates.

Mr. KREEGER. I have not finished my question.

The COURT. Let him finish his question, and don't answer until I have ruled out the objection.

The WITNESS. All right.

Q. Rabbi Quinn, in your opinion was Mesifta Talmudical Seminary complying with orthodox Jewish tradition between 1926 and 1941 when it had ordination certificates issued

70 by outside rabbis instead of by heads of the school?

Mr. STANZIALE. I object to that. The answer is obvious your Honor.

The COURT. I think I shall sustain the objection on two grounds. The first is that the answer is obvious, and the second is that after all we must limit this examination.

Mr. KREEGER. Very well, your Honor.

The COURT. Because we will go too far afield if we let it go too long.

Q. Since 1940 has the Mesifta Talmudical Seminary expelled any students for the reason that the authorities suspected that they were not honest rabbinical students?

Mr. STANZIALE. I object to that.

The COURT. Well, I will let him answer that.

Mr. STANZIALE. All right.

The COURT. You are asking him now for an affirmative action on the part of the school.

Mr. KREEGER. That is right.

A. I couldn't say we used suspision as a ground of expelling a student.

Q. Well then, knowledge?—A. But when we questioned the student and the student told us so. If after suspecting a certain student's point of view, then as a result of questioning the
71 student we were convinced that the student did not have bona fide intention of becoming a rabbi, then we would ask him to leave the school.

Q. Now, you testified to one case early in the day, whose name you gave.—A. Yes.

Q. Was that the only case?—A. No; it was not.

Q. Have you any idea roughly how many such cases there have been since 1940, roughly; a conservative estimate?—A. About a half dozen.

Mr. KREEGER. That is all.

Re-cross-examination by Mr. STANZIALE:

Q. Do you remember the names of the other persons?—A. I remember several names.

Q. Will you let us have them?—A. Yes, surely. One name is Robert Kranzler. Another name is Alvin Engel. Third one is Joseph Kramer.

Mr. KREEGER. And, Rabbi Quinn, those have nothing to do with students who were expelled since 1940 for not keeping up with their work?

The WITNESS. Oh, no. Those students were all students in good standing. I mean, we expelled many other students who did not reach the standards of our school, students who were even beyond, much beyond draft age. If they did not keep up with the standards of the school, they were expelled.

72 Mr. KREEGER. Since 1940——

Mr. STANZIALE. Do you realize that you have interrupted my examination?

Mr. KREEGER. Oh, I am sorry. I thought you had finished.

Q. There were a few other names you were about to give us. May we have them?—A. Oh, yes. Saul Goodstein.

Q. Anyone else that you remember?—A. Yes. Abraham Rothman.

Q. Now, these were all expelled after or subsequent to 1940?—A. Yes.

Q. None before?—A. None before.

Mr. STANZIALE. That is all.

Mr. KREEGER. One more question, your Honor.

The WITNESS. There may have been more.

Mr. STANZIALE. That is all right.

Redirect examination by Mr. KREEGER:

Q. Were any students expelled in the year 1944 of draft age for failure to keep up with their studies?—A. Yes, sir.

Q. About how many would you say, if you recall, conservatively?—A. About a score.

Q. A score; and were such students expelled in 1943 too
73 in any number?—A. Yes. Approximately about the same.

Q. And in 1942?—A. Yes.

Q. That is all.—A. I mean, this was done even prior to the draft law.

Q. But it continued after the draft law?—A. Yes; it continued after the draft law.

Q. And it continued although the students were within the draft age?—A. Yes. Of course some of those students——

Mr. KREEGER. That is all.

The COURT. Would you mind telling us of these that were expelled because you didn't think they intended to become rabbis, what their purpose was in taking up that course of study?

The WITNESS. Well, they may have had intentions of becoming rabbis up to a certain time, and then in some case the studies became too difficult. In other cases it was just a change of attitude. The student felt a certain way in his adolescence, and then when he reached maturity he felt that his calling in life was in a different vocation.

The COURT. It wasn't because they were there to avoid military service?

The WITNESS. You mean prior to that time?

The COURT. No. These particular ones the names of
74 whom you have given. Did you send them away because you thought they were studying to be rabbis in order to avoid military service? Was that the reason you did it?

The WITNESS. No, your Honor; I couldn't say that.

The COURT. That was my question. That is all. I think you had better get off the witness stand before they start in on you again.

The WITNESS. Thank you.

The COURT. Gentlemen, let's confine it a little more strictly within limits from here on.

Mr. EICHLER. If your Honor please, we only have two witnesses, the boy and the doctor that I referred to.

The COURT. Very well. Put one of them on the stand.

JACOB SAMUELS, the petitioner, called and affirmed on his own behalf, testifies as follows:

Direct examination by Mr. EICHLER:

Q. Mr. Samuels, you are the petitioner on this habeas corpus writ, are you not?—A. Yes.

Q. Where were you born?—A. I was born in Brooklyn, December 28, 1920.

Q. 1920. Have you lived in Brooklyn, New York, all
75 your life?—A. Yes.

Q. When did you first go to school? How old were you?—A. About six, I imagine.

Q. Do you recall what school you went to?—A. Yes. Yeshivah Torah Vodaath, 206 Wilson Street.

Q. You were six years of age when you went there?—A. Yes.

Q. Is that what we call a Hebrew parochial school?—A. That is right.

Q. What is the meaning of the word parochial?—A. I imagine it is used where the secular teaching and theological teachings are done at the same time but at different parts of the day.

Q. How long did you continue your studies at the Yeshivah?—A. I graduated the elementary school, both the Hebrew department and the English department, and then I entered——

Q. Now, wait. When was that?—A. In 1933. June 1933.

Q. How old were you then?—A. About thirteen; thirteen and a half.

Q. In this Yeshivah there was both a Hebrew department and an English department; is that so?—A. Yes.

Q. So the result was obtained a general course, a general
76 education both in English and in Hebrew?—A. And in Hebrew. That is right.

Q. And then at the age of thirteen you were admitted to the Mesifta Talmudical Seminary?—A. Yes, sir.

Q. And thereupon you continued to study there from 1933 until 1939?—A. 1939; yes.

Q. Until what month in 1939?—A. October 1939.

Q. During those six years will you tell the Judge what was the nature of your studies?—A. Well, aside from the secular knowledge, the secular education, there was the Hebrew department which I attended from the morning until three o'clock, and then there was the hour recess, and then we had the English session. The subjects are prerabbinical courses; that is, the same subjects that are taught later on but with less emphasis.

Q. In what period did you say that the lesser emphasis was placed upon the rabbinical studies? In what period?—A. Till 1937; about the first three or four years.

Q. Then from 1937 on the course became more intensive?—A. The course becomes more intensive; yes.

Q. Were the school hours any longer from 1937 on, or were they the same school hours as before 1937?—A. Well, the regular session is still three. From nine to three there are boys there that have to go to school, high school, so naturally they have to allow

the time for the English sessions, but the boys that already
77 graduated high school or for some reason they don't go to high school, or they took a shorter course in the English subjects, and they continued their studies through the day till about five or six o'clock.

Q. Would you say that you were going to school from nine to three from 1937 on? Is that approximately correct?—A. Yes, sir.

Q. What did you intend to be your calling in life as a result of your attendance at the Masifta?—A. Well, I was going to be a practicing rabbi.

Q. A what?—A. A practicing rabbi. I was undertaking the rabbinate as my life's profession.

Q. As your life's profession?—A. Yes, sir.

Q. Are there any rabbis in your family?—A. Well, I have two uncles that are rabbis, and both of my grandfathers were rabbis.

Q. Did they devote their lives to that profession, your uncles and your grandfathers?—A. These relatives are in Europe and I haven't seen any of them.

Q. You mean you know that from family information?—A. Surely. I don't know that. We have letters to the effect, but we know they are rabbis.

Q. Now, you suspended your studies in the Mesifta Talmudical Seminary in October of 1939, did you not?—A. Yes, sir.

78 Q. Will you tell us why?—A. Well, it was in the summer of 1939, about August or thereabouts, I was taken sick with some dizzy spells and I was laid up for a couple of days in the hospital, and the doctors never did find out what was the matter, and I came back. The family physician——

Q. What hospital did you become a patient in?—A. I wasn't in any hospital *in any hospital.*

Q. Oh, excuse me. I thought you said hospital. You mean house?—A. House. House physician. And I went there for a number of examinations and he gave me all kinds of nerve sedatives and pills and it never did help, and he advised that I take a complete rest, which was not for about three months or thereabouts, and then I kept going to him every now and then, and then he said it would be all right for me as a suggested measure to undertake physical labor in order to ease my mind; I should not do any studying.

Q. How old were you at that time?—A. I was nineteen.

Q. Who was the doctor?—A. Dr. Benjamin Hertz.

Q. Where does he practice?—A. In Manhattan, 191 East Second Street, I think.

Q. How did you come to go to a Manhattan doctor, living in Brooklyn?—A. Well, he has been our physician for a number of years.

Q. After you suspended your course, did you remain com-
79 pletely inactive for a certain period of time?—A. Yes.

Q. Until when?—A. Until January.

Q. Of 1940?—A. Yes. The middle of January.

Q. And what did you do in the middle of January 1940?—A. I went to the doctor for another examination, and that is when he suggested that I undertake some physical labor.

Q. And did you?—A. Yes, sir.

Q. What did you do?—A. I got a job at Mr. Irving Bonim's, 15 West 26th Street, Manhattan, as well, I did shipping clerk. I did some selling. I was one of the help in the place.

Q. How did you come to work for this particular man?—A. Well, I went to the, also a friend of mine, principal of the elementary school, and I asked him if he knows an orthodox place where I can get a job; I should not have to work on Saturday; and during a couple of days he informed me of this place.

Q. You mean the principal of the elementary school recommended you to Mr. Bonim's establishment?—A. Yes.

Q. How long did you continue to work there?—A. I was there the year 1940, 1941, and part of 1942.

Q. When did you quit in 1942?—A. That was the end of June or the beginning of July.

Q. When you quit in June or July of 1942, did you resume
80 your day courses at Mesifta?—A. Yes.

Q. Is that the reason you left your job?—A. That is right.

Q. To go back to the day courses?—A. Yes.

Q. But prior to June or July of 1942 you did actually return to the Mesifta?—A. That is right.

Q. To your studies, didn't you?—A. Yes.

Q. When was that?—A. That was in September 1941 I returned to the evening session.

Q. And then you continued to work in the day time?—A. Yes.

Q. And took up your evening courses in Mesifta?—A. Courses in the evening; that is right.

Q. Did Mesifta have evening courses?—A. Yes; surely.

Q. How long had evening courses been an established feature of Mesifta, as far as you know?—A. About eight years I think.

Q. How many hours in the evening did you devote to it?—A. Three hours.

Q. Three hours, and you continued the evening courses until you went back in July of 1942?—A. Yes.

Q. Can you furnish any reason to us why you did not resume your day courses prior to June or July of 1942?—A. Well,
81 the reason the doctor told me to leave the school and go to work, I wasn't sick physically. It was just a mental condition. I had these dizzy spells that didn't let me concen-

trate too much on my studies, and I kept going to the doctor very frequently, every so often, and he just kept giving me these sedatives. He was never able exactly to find what brought on these spells. It would go for a month and then I wouldn't have it for a month, and so on; and while I was working there I was feeling, I felt that I was getting a little better, and it was during one of these oral discussions that one has with the doctor, just suggestive measures, that he said it would be all right for me to go back to the evening session.

Q. Was that how you happened to start back in September of 1941 in your evening courses?—A. Yes.

Q. From July of 1942 on you took the day courses until the time of your induction?—A. That is right.

Q. When were you inducted?—A. I was inducted, I received my induction notice for December 20, but I was inducted to the Army December 26. I was sworn into the army December 26.

Q. When did you first register for the draft, Mr. Samuels?—A. That was on February 16, 1942.

Q. What was the first classification given to you by your local draft board?—A. 4-D.

Q. Do you recall when that was approximately?—
82 A. I think it was in August; about August or September. I think it was September; either the end of August or the beginning of September. I don't know.

Q. Of 1942?—A. Of 1942; yes.

Q. At the time the classification of 4-D was made by your local draft board, had you apprized it of the facts which you have just testified to? Had it known at that time of these facts which you have now testified to?—A. Yes, sir.

Q. As to your being——A. Well, I filed both of my questionaires, the occupational question'aire where I stated the type of work I did and what I do and what I am best fitted for. In there I still wrote that I am best fitted for the rabbinate.

Q. In other words, in the question'aire you described substantially what you have testified to today?—A. Yes, sir.

Q. As to your previous status?—A. Yes.

Q. And as to the occupation that you were engaged in, and so on?—A. On the occupational.

Q. So that you say then when you were classified as 4-D, your draft board knew the things you are talking about now?—A. Yes, sir.

Q. And you remained in that 4-D classification until approximately when?—A. September 1944.

Q. September 1944?—A. 1944; yes.

83 Q. Was it then that your classification was changed?—A. Yes.

Q. To 1-A?—A. 1-A.

Q. Did you thereupon appeal that classification?—A. Yes.

Q. What was the determination of the appeal board?—A. They turned down the appeal.

Q. They sustained the finding of the appeal board?—A. That is right.

Q. I mean, they sustained the finding of the local board?—A. Of the local board.

Q. Did you thereafter resume or attempt to, or rather, did you then approach the local board again in an effort to have your classification changed?—A. Yes, sir.

Q. As a result of the conference at the local board, they continued you in the 1-A classification?—A. Yes, sir.

Q. Has it always been your intention to take up the calling of rabbi?—A. Yes, sir.

Q. How long is it that you have had such a desire?—A. Well, I can say about '36, '35, or '36, that I actually made up my mind to become a rabbi.

Q. How old were you then?—A. I was about sixteen; fifteen and a half; sixteen.

Q. That was about 1935 or 1936?—A. About then.

Q. Do you know when you were to have completed your
84 course at Mesifta had you not been inducted?—A. I probably would have been ordained about a year and a half ago or two years ago maybe. It is really according to the individual, you see.

Q. I don't know whether you understood my question. Had you not been inducted into the army in December of last year, when under normal conditions would you have completed your course for the rabbinate?—A. In June 1945, this year.

Q. When would you have completed your course for the rabbinate had you not suspended your studies for the period that you testified?—A. Well, about the two years that I was away; about two years back; a year and a half.

Q. Approximately 1943?—A. Yes.

Mr. EICHLER. That is all.

Cross-examination by Mr. STANZIALE:

Q. In June of 1939 you say that you discontinued your studies at the Mesifta Seminary?—A. October 1939.

Q. I see. It was not June?—A. No.

Q. Whom did you consult at the seminary in connection with your severance or continuance of your studies in the Mesifta Seminary?—A. I have spoken to the dean.

Q. What is his name?—A. Rabbi Mendlovitz.

Q. Yes.—A. And my immediate teacher, the last

85 teacher I had, Rabbi Rivkin.

Q. What did you say?—A. Well, they knew all along of my physical condition.

Q. As a result of what you told them or someone else?—A. As a result of what I told them.

Q. All right.—A. The days I had been absent. What the teacher told them too.

Q. You got these dizzy spells while you were at camp; isn't that so.—A. Yes.

Q. And then you spoke to your rabbi about it?—A. Yes.

Q. And you told him you were going to discontinue your studies?—A. I told him what the doctor advised, that I discontinue my studies.

Q. Did you tell him for how long a period of time you were going to discontinue your studies?—A. The doctor himself didn't tell me. It was just a suggestive measure to see exactly what can be—the remedy that can be done.

Q. And did the doctor at any time in his examinations with you tell how long you would have to be away from your study?—A. No.

Q. Did the doctor tell you that pursuing the course of study that you had chosen would be detrimental to your health?—A. Yes; a number of times he did. I mean, when I had general physical——

86 Q. And did he tell you that you should do physical work?—A. Well, that was when I got these dizzy spells.

Q. Yes.—A. He advised that I should not have any mental strain, and that is when he advised I do this physical work.

Q. Now, isn't it a fact that at that particular time you then decided that you wouldn't continue your studies any longer and you would continue doing physical work?—A. It was not what I decided. It was what I was forced to do.

Q. And isn't it the fact that from that moment on you severed whatever thoughts you may have had of continuing your studies to become an ordained rabbi?—A. No, sir.

Q. It is not. Now, let's see. In 1940, June 1940, you went to work?—A. January 1940.

Q. Was it January? Now, from October to January you did no physical work?—A. Nothing whatsoever.

Q. Just complete rest and relaxation?—A. That is right. I was home for the three months.

Q. You went to work with the Eaton Textile Co.—A. Yes.

Q. Did you work on machines?—A. No.

Q. What kind of work were you doing?—A. It is a house that sells piece goods; cotton piece goods.

Q. Were you a salesman?—A. I did some selling there,
87 and a stock clerk, shipping clerk.

Q. Now, you continued that work up until when?—A. Until about the end of June. I think it was the beginning of July, to be more exact.

Q. Of what year?—A. 1942.

Q. So you worked all the year of 1940; is that right?—A. Yes.

Q. You worked all the year of 1941?—A. Yes.

Q. Until June of 1942?—A. Yes.

Q. All right. Now, when did you start to go to night school?—A. That was in September 1941.

Q. September 1941. While you were going to night school you were working in the day?—A. Yes, sir.

Q. Didn't your physical efforts interfere with your schooling at night?—A. No, sir.

Q. You worked what time in the day?—A. From nine to six.

Q. And what time did you go to school?—A. Seven-thirty.

Q. From seven-thirty to when.—A. Ten-thirty.

Q. You had to travel from Brooklyn to New York in the morning?—A. Travel to work?

Q. Yes.—A. Yes.

Q. Then you had to travel from New York or Manhattan to Brooklyn?—A. Yes.

88 Q. Now, you continued in the evening course until June, I understood you to say, of 1942. Then you went to the day course?—A. Yes.

Q. Is that correct? Now, you appeared, did you not, before an advisory panel?—A. Yes, sir.

Q. And how many men were seated on this advisory panel?

Mr. EICHLER. Now, if your Honor please, I want to enter an objection at this time to any questions directed to his appearance or participation before an advisory panel. In fact, I will at the same time object to the introduction as part of the selective service file of any of the record which relates to an advisory panel, for this reason: The advisory panel is a peculiar institution existing as a result of the permission of the Director of Selective Service of the City of New York, an advisory theological panel. There is nothing in the selective service regulations which authorizes it. The duty, of course, of classifying a person who is subject to the draft rests in a local board. The regulations provide for an appeal to an appeal board, and then finally, if there is any dissenting opinion by the appeal board, to the President of the United States. That is the procedure outlined in the selective service regulations, and if I am wrong I know Lieutenant
89 Colonel Daly will correct me, and so will Mr. Stanziale.

The theological advisory panel whose city of New York

possessed some peculiar function in the nature, as the title implies, was to advise. Nobody yet seems to know whether it was to advise the local board or an appeal board. At any rate, I maintain that it had no legal or recognized—is authorized function so far as the administrative agency devised by the President of the United States under his powers as conferred upon him by Congress or concerned, and therefore, while we have nothing to conceal, I maintain that anything in the record which relates to an advisory panel has no part, is not evidential, is not competent, is irrelevant, and is not material to the issue, and therefore unless the purpose of this question is to attack the credibility of this witness on the theory that he made certain statements to some particular group, which is different from what he says today, I strongly object to any questioning along those lines and object to the inclusion in the selective service record of any conference that he participated in or any questioning by an advisory panel.

The entire record we consider perfectly proper. We have examined the entire record. It is perfectly proper, and we think the Court should examine it, but we say this, that the eleven
90 pages which purport to be a question and answer examination [illegible] panel, an advisory theological panel, and [illegible] of that advisory theological panel, is not a proper part of the selective service record because there is nothing in the selective service regulations which authorizes the local board or appeal board to rely upon this so-called panel, because there is no authority for its existence. Therefore I ask that that be excluded from the record. It starts with a letter dated August 17, 1944, head note, "Selective Service Headquarters."

The COURT. Overruled.

Mr. EICHLER. Will your Honor permit me an exception?

(Which exception is hereby allowed and sealed accordingly.) (Sealed.)

(The last question is read.)

Mr. EICHLER. I object too for the same reason I have given, if your Honor please.

The COURT. I don't think you need to object to each question. You are stating your objection and the reason for it, and it is applicable to all of this.

Mr. EICHLER. Thank you.

(Which exception is hereby allowed and sealed accordingly.) (Sealed.)

91 A. I have no idea.

Q. Was it five?—A. It might have been more.

Q. When did you appear before this panel?—A. That was in May, I think, 1944.

Q. In May of 1944. Correct?—A. Either May or June of 1944.

Q. Now, you were asked by the gentlemen on the panel concerning your theological ideas?—A. Yes.

Q. You were also asked the time that you began your studies?—A. Excuse me. May I make a statement?

The COURT. Speak up a little louder.

The WITNESS. I say, the reason I hesitated just now, was because I haven't found it on the transcript of the records.

Q. You were asked when you began your studies?—A. There were certain questions that I was asked. The things that I answered, they don't appear on their transcript.

Q. Were you asked when you began your studies for the rabbinate?—A. I must answer possibly. That is the only thing I can answer.

Mr. EICHLER. If your Honor please, if this is a test of the witness's recollection as to what he was asked and what he answered before a theological panel, I submit that Mr. Stanziale has the questions and answers, and I strongly object to this type of
92 questioning. There is the record of what he was asked and what he answered. That is the thing I objected to, but so long as your Honor has overruled it, I maintain that this is a very unfair way of attempting to test the witness's credibility months later. His testimony is that he appeared before a panel of some five men, some six or seven months ago. Now, to ask him, weren't you asked this, and so forth, and what was your answer—I think that is an unfair test. There has been no attack on his credibility so far.

The COURT. I think he can be examined on that, and I am going to continue to rule that way, and if you make an objection and a speech every time he asks a question, we will be here a long time.

Mr. EICHLER. I did not intend to, but I only want to emphasize the point that it is an unfair way to test his memory.

The COURT. I will state to you in the record that, although this habeas corpus may not come under the rules, I will apply the rules of civil procedure, and you need not continually make your objection. It goes to the entire line of testimony, and if it is improper I will try not to consider it when I read it and it is before the Court, and we will expedite the hearing very briefly now if
93 you will just—Your objection is there and your exception is to the whole line of testimony.

(Which exception is hereby allowed and sealed accordingly.) (Sealed.)

Q. You were also asked, were you not, Mr. Samuels, in connection with your leaving the rabbinical school in June of 1939?—A. In October 1939.

Q. You say in October. Very well. Now, you did take employment in 1940?—A. Yes.

Q. Now, after this hearing was conducted by the advisory panel on theological students, you then were reclassified, weren't you, from 4-D to 1-A?—A. Yes.

Q. And your reclassification was effected by Local Board 193 on or about the period of August 22, 1944?—A. Yes.

Q. Is that correct? Now, after you were reclassified 1-A, you then appealed that classification to the appeal board?—A. Yes. I asked for hearing and then for an appeal; the regular channels.

Q. You appealed from your classification of 1-A from the local board to the appeal board?—A. Yes, sir.

Q. At the time that you appealed you submitted, both to the local board and to the appeal board, all the facts in connec-
94 tion with your case; isn't that so?—A. The facts were already there in 1942. I didn't have nothing to add except what was already in the questionaire before.

Q. You submitted in addition to that, did you not, letters from approximately twelve rabbis?—A. Yes, sir.

Q. Attesting that you were a reabbinical student?—A. Yes, sir.

Q. And these letters that you submitted to your local board were transferred to your appeal board in consideration with your appeal, were they not?—A. I have no idea of that.

Q. And you had submitted them to the local board with your appeal?—A. Yes.

Q. Now, after you submitted these twelve letters and additional statements in connection with your position as to whether you were a student to be classified four D, you then received notication that the appeal board had rejected your appeal and confirmed your classification by your local board; isn't that so?—A. Yes.

Q. All right.—A. Excuse me, sir.

Q. Yes.—A. The distric' attorney lay stress on the fact that after the letters were sent in the local board or the appeal board still saw it proper to disqualify the statements.

Q. That is right.—A. I was told by the local board
95 at the hearing that the bringing of letters has no value whatsoever.

Q. But you did submit letters?—A. Yes; but they told me right then and there before I brought the letters, that they wouldn't have any value whatsoever. In other words, the facts that they based their hearing on was something that they already had two years before. It was on the advice of the panel only, and they stated so in their statements.

Q. But in spite of that advice, as you say, you did submit with your appeal the letters of twelve rabbis attesting that you were a bona fide rabbinical student?—A. Yes, sir.

Q. And you then received on October 25th a 1-A classification affirming the local board?—A. Yes.

Q. After you received the notification from the appeal board that your appeal had been rejected, you then wrote letters to the board, did you not, asking for a reopening of your case?—A. Yes.

Q. And for a restatement of your position in connection with your rabbinical status?—A. Yes, sir.

Q. And you then brought to the board Rabbi Quinn?—A. One second. I asked for a reopening on additional evidence——

Q. That's right.—A. That was brought in here.

96 Q. And you were accorded a hearing, weren't you?—A. That is right.

Q. And at this hearing, which was sometime in the month of November 1944, Rabbi Quinn came with you?—A. Yes, sir.

Q. And you then had a hearing at which Mr. Imperato, the chairman of the board, was present, Mr. Logano, and a Mr. White, who was also of the Jewish faith?—A. Yes.

Q. And conducted an investigation in connection with your case; is that correct?—A. I don't know if they conducted an investigation. All I know, they sat at the hearing.

Q. And both you and Rabbi Quinn gave additional testimony at that particular hearing?—A. Yes, sir.

Q. And after that hearing you were still continued in the 1-A classification?—A. Yes, sir.

Q. You then received from the local board, did you not, a notice to appear for induction?—A. Yes, sir.

Q. And you then after a particular time desired a reopening of your case, or a stay of your induction?—A. Well, I was notified by the board that they would reconsider the case.

Q. And they did reconsider?—A. They told me to come down at a certain evening, and when I came there with Rabbi Quinn, the clerk notified me that they reconsidered it without my presence two days previous.

97 Q. And stated that they were still of the opinion that you should be continued in 1-A?—A. No; they didn't state that.

Q. What did they state to you?—A. There was a letter of induction. That was their statement.

Q. And you finally on December 26th were sworn into the United States army?—A. Yes, sir.

Q. Now, you also filed in 1942 what is known as an occupational question'aire?—A. Yes, sir.

Q. You in that occupational question'aire gave a social security number?—A. Yes, sir.

Q. For what purpose did you obtain a social security number if you continued to pursue your studies and finally become ordained as a rabbi?—A. I did not continue to pursue my studies

when I was working. As soon as I worked the nature—The wording of your question is a little——

Q. I don't intend to. I mean, why did you get a social security number if you intended to continue in the rabbinate?—A. I understood that was a ruling of the Department of Labor. Anyone working must get a social security card.

Q. Did you notify Mr. Bonim that you were going to work temporarily there?—A. I didn't know myself how long I was going to work, a month, a year, maybe more. I had no idea.

Q. Did you after you started to work notify either of the rabbis, Rabbi Quinn or Rabbi Rivkin, over how long a
98 period you possibly would be away from your studies?—A. No.

Q. Did you ever ask your doctor, Doctor Hertz, how long you would be away from your studies?—A. No.

Q. Well, when did you intend to recommence your studies for the rabbinate?—A. As I said before, it was during one of these oral discussions that the doctor uses to diagnose sometimes his cases, that he said it was all right, it would be all right for me to continue my studies. First he told me to take it easy. That is when I went back to the evening session, and then when I felt that I was getting much better, that is when I came back to the day session.

Q. When you went to the evening session for the first time, had you consulted your physician as to whether it was all right for you to go to the evening session?—A. Yes.

Q. When was that?—A. Well, the exact date I don't know, but I came back to the evening session, it was September 1941.

Q. Did you tell your doctor that you were going to work in the day time from seven until six, and that from seven-thirty until ten-thirty you were going to study?—A. Well, I was never under the doctor's care since 1939 for physical ailment. It was only this mental, dizzy spells that I kept complaining of.

Q. But you told us that you told the doctor sometime
99 before July of 1942, when you started your evening courses, that you consulted your doctor.—A. Yes. I am going to him during this period of years; surely.

Q. Did the doctor tell you it was too much of a strain to work from seven until six and then from seven-thirty to ten-thirty to go to school?—A. No, sir.

Q. Did he tell you it was all right?—A. No, sir. Physically I was all right.

Q. What made you change from night school to day school and discontinue your work?—A. I felt that I was physically getting along well and I wanted to continue my studies on a broader basis.

Q. Why couldn't you have continued your work on the same basis

and then go to school in the evening?—A. Well, the evening session, being that the time limit is much shorter, naturally it takes a longer time, a year or two years, or whatever the—It still depends on the individual.

Q. How much were you earning at the time that you were working?—A. Well, I started with twelve dollars, and when I left it was twenty-five.

Q. You in your question'aire, your occupational question'aire, in 1942 stated that you were a shipping clerk.—A. Yes, sir.

Q. And that you were better suited for the rabbinate?—A. Shipping clerk, selling, stock clerk.

100 Q. In February of 1942 you registered, did you not?—A. Yes.

Q. And you were continued in the 4-D classification up to and including a short time after you had your hearing before the advisory panel on theological students?—A. Well, I had my hearing, I think it was either in May or June, and I got my 1-A classification around September, I think.

Q. After you had appeared before the advisory panel on theological students, you then appeared before the local board, did you not, before you received your final classification of 1-A—A. No, sir.

Q. Sure of that?—A. Yes, sir.

Q. When you received your 1-A, did you speak to the chairman of the board?—A. 1-A?

Q. Yes.—A. Well, I asked for a hearing. When I received my 1-A I asked for a hearing.

Q. How many hearings in all did you have from the time that you received your 1-A classification and were inducted into the Army on December 26th of 1944?—A. Well, there was one. Let's see. There were two official hearings.

Q. And how many unofficial hearings?—A. One. This unofficial hearing was in reference I was called down for this hearing——

Mr. EICHLER. That is enough.

101 Mr. STANZIALE. I have no further questions, Judge Rice.

Redirect examination by Mr. EICHLER:

Q. One question, Mr. Samuels. There has been some talk about this advisory panel. Do you know who these men were?—A. No, sir. I just know of one.

Q. What?—A. I know of one, who was described to me; the one that did most of the questioning.

Q. How many men were there at this panel that you appeared at?—A. At the time I was there there might have been seven or eight, maybe more.

Q. Seven or eight individuals?—A. Yes.

Q. And how long did your interview last before this panel?—A. About six or seven minutes.

Q. Well, the questions and answers were recorded, weren't they?—A. Yes.

Q. By a stenographer?—A. Yes.

Q. The entire conference took six or seven minutes?—A. Yes.

Q. Do you know the profession or occupation of the men on this panel?—A. Well, some of them are lawyers, I am told, some judges, and there are some rabbis on it also.

Q. You were told that. Were they any rabbis there
102 when you were being questioned by this panel?—A. Not to the best of my knowledge.

Q. Well, why do you make that statement when you say not to the best of your knowledge? Why couldn't it have been just the other way?—A. Well, being that I didn't see anyone with skull caps there, and an orthodox rabbi would surely wear a skull cap, I surely took it for granted there were no rabbis present.

Q. Was there anybody there who announced to you that he was a rabbi, whether reformed or orthodox?—A. No, sir.

Q. Were you examined as to your rabbinical knowledge by this panel?—A. No, sir.

Q. Did the local board or your appeal board ever advise you who this panel consisted of?—A. No, sir.

Mr. EICHLER. I desire to call the Court's attention to the fact that the report of the advisory panel in the record is not signed and there is nothing in the record as far as I know, unless Mr. Stanziale wants to correct me, as to who this panel was.

Mr. STANZIALE. Just a minute.

Mr. EICHLER. How will the Court know who the panel was? It is an unsigned report.

Mr. STANZIALE. Here is a statement, if your Honor please. I am reading from the record itself.

Mr. EICHLER. The Court will read it undoubtedly.
103 Mr. STANZIALE. Your Honor, may I proceed?

The COURT. Yes. Go right ahead.

Mr. STANZIALE. Thank you, your Honor. From the advisory panel on theological classification, a statement for the record, which is dated June 21, 1944.

Mr. EICHLER. Completely unsigned.

The COURT. Mr. Stanziale, do you want to read it in?

Mr. EICHLER. Yes.

The COURT. I am going to read that entire record. I will tell you that.

Mr. EICHLER. I only want to lay stress on the fact that this report is unsigned.

The COURT. Well, let's get all the facts in, and then I will hear you.

Mr. EICHLER. I only want to know one thing from Mr. Stanziale, whether that selective service record does indicate who the members of the panel were.

Mr. STANZIALE. The record speaks for itself, your Honor. I haven't seen it.

Mr. EICHLER. You have got the selective service man next to you.

The COURT. You can look at the file and find out.

104 Mr. EICHLER. I have examined the file, your Honor, and that is why I am willing to be corrected on my statement now that as far as I know there is nothing in the record at all, your Honor, as to who that panel was.

The COURT. If it is not in there, I will say you are right. If it is in there. I will find that out.

Mr. EICHLER. Dr. Hertz.

Mr. STANZIALE. I just want to ask one more question of this witness. I am sorry, Judge Rice, but it has developed from the questions.

The COURT. Yes. All right.

Re-cross-examination by Mr. STANZIALE:

Q. There were members of the Jewish faith on this advisory panel, were there not?—A. Well, surely; yes.

Q. What?—A. Yes.

Q. There were. You say that you don't know whether there were any rabbis on this advisory panel because you didn't see any skull caps?—A. Yes, sir.

Q. Do you differentiate between a rabbi, an orthodox rabbi, and a reformed rabbi?—A. Surely.

Q. Do you feel that a reformed rabbi is unable to fairly and squarely classify or listen to your rabbinical views?—A. Yes, sir.

Q. Why?

105 The COURT. Oh, let's not go into that.

Mr. STANZIALE. I withdraw that.

The COURT. That involves a theological discussion and we would be here until next week.

Mr. EICHLER. That is all, your Honor.

BEN HERTZ, called and affirmed on behalf of the petitioner, testified as follows:

Direct examination by Mr. KREEGER:

Q. Dr. Hertz, you are engaged in the practice of medicine?—A. Yes, sir.

Q. For how long a period of time?—A. Since 1926.

Q. You maintain your offices in Manhattan?—A. Yes, sir.

Q. Do you know the relator, Jacob Samuels?—A. Yes, sir.

Q. Have you taken care of the members of his family over any period of time?—A. Yes.

Q. Going back to the year 1939, did Jacob Samuels consult you medically?—A. Yes, sir.

Q. Will you tell us when and in what connection?—A. He had vague symptoms of dizziness and he described certain fainting spells to me. That was all through the latter part of 1939. Physically I was never able to find anything definitely
106 organically wrong with him. These symptoms, you might suspect the possibility of some neurological condition, and I believe it was around September when I suggested to him that he give up studying and see how he will react on medication.

Q. And did you prescribe medication for him at that time?—A. Yes. I remember he had phenobarbital at the time.

Q. Do you know whether he gave up school at that time?—A. I wouldn't know. I advised him to at this time, but I wouldn't know.

Q. Did he come back to see you?—A. He came back early in 1940, at which time he still had his symptoms.

Q. Was there any question between you and him at that time of any physical labor on his part?—A. Why, he suggested that possibly—I did not suggest it to him—he suggested possibly working will not do him any hurt, and I thought it would be a good idea for him to try to do some physical work instead of his studying, and I believe he subsequently did go to work.

Q. Did he consult you during the year 1940?—A. Yes. He was in at irregular intervals.

Q. And did he continue to complain of the dizzy spells?—A. He continued to complain of dizzy spells; yes.

Q. Do you recall his consulting you in 1941, towards the middle of the year, about going back to school part time?—
107 A. Yes. I recall that. I also have a record of suggesting a neurological consultation to him before he went back to school, and I never got a report on that, I don't know whether he ever had this neurological consultation or not, but I allowed him to go back to his studies in 1941.

Q. And was that to be part time or full time in 1941? Do you recall?—A. Well, I suggested a gradual start of his studies and see how he reacts to it.

Q. There has been testimony here, I believe while you were sitting for a few minutes in the courtroom, that he returned in September 1941 to evening session and continued to work during the daytime. Did you know about that arrangement? The latter part of 1941?—A. No, sir.

Q. Did he see you again in 1942?—A. Yes. He has seen me every two months or six weeks.

Q. And in 1942 when he saw you, did he talk with you about his mental condition?—A. Yes.

Q. And did he tell you that he was feeling better at that time?—A. He was feeling better but not completely symptomless.

Q. Did he tell you in 1942 that he was feeling better enough to return to the day course, and did he ask for your opinion?—A. Yes. I believe he told me he was going back to day school.

Q. Was it your opinion that if he felt better he could
108 go back?—A. Yes.

Mr. KREEGER. That is all.

Cross-examination by Mr. STANZIALE:

Q. Doctor, did I understand you correctly at the time that you examined Mr. Samuels, he suggested that he go to work and you approved?—A. I had him quit his studies, and two or three months later I remember he suggested he should go to work, and I agreed with him, it may be a good thing for him.

Q. Do you have any records with you as to how many times you saw him in the year 1940?—A. No. I just have some scrap.

Q. Do you keep any records?—A. Yes; I keep records.

Q. How many times would you say you saw him in 1940?—A. No more than four times probably during the whole year.

Q. 1941?—A. 1941; the early part of the year was his fairly bad year, and that is when I suggested this neurological consultation, and then he came in for a while at two or three week intervals, and then later on less frequent intervals.

Q. You don't know whether he submitted to a neurological examination?—A. I don't know. I questioned his family on it a couple of weeks ago and they don't know anything about
109 it.

Q. You didn't see him in 1942, did you?—A. I saw him before he was inducted.

Q. He was inducted on December 26th.—A. When?

Q. 1944.—A. I don't know just when I saw him before, but I remember seeing him before his induction because I suggested that he get an army encephalogram. I still had my suspicions about his neurological status.

Q. Let's see if we can get some degree of accuracy. You saw him in 1940 about four times?—A. I saw him for his present complaint, for his neurological condition, in 1939 originally, and then in 1940 several times.

Q. 1941 you saw him?—A. 1941 several times.

Q. How about 1942?—A. I believe I have seen him every year since he started off with these complaints.

Q. Can't you tell us how many times in 1942?—A. Irregular intervals. I couldn't say.

Q. And you say you saw him before he was inducted?—A. Yes.

Q. How soon before he was inducted?—A. That I don't recall. I remember giving him some sort of a note about his neurological status.

Mr. STANZIALE. That is all.

Mr. EICHLER. That is our case, if your Honor please.

110 Mr. STANZIALE. If your Honor please, the Government has no rebuttal and relies on the local board file and an argument which it desires to make for the contents of it.

(At this point a short recess is taken, and then Mr. Kreeger argued in behalf of the petitioner and Mr. STANZIALE in behalf of the Government.)

111 In the District Court of the United States
For the District of New Jersey

IN THE MATTER OF THE APPLICATION OF JACOB S. SAMUELS FOR A WRIT OF HABEAS CORPUS

Memorandum opinion

Filed Feb. 19, 1945

Jacob S. Samuels (hereinafter referred to as relator) registered on August 29, 1942, with the Local Board of Kings County, New York, pursuant to provisions of Selective Service and Training Act of 1940, 50 U. S. C. A. 301, et seq. (hereinafter referred to as the Act). He was born December 28, 1920. At the age of thirteen or fourteen years he entered the Mesifta Talmudical Seminary, a Hebrew theological or divinity school at Brooklyn, New York (hereinafter referred to as Seminary), and pursued the prerabbinate course in that institution.

It is admitted that the Seminary is a qualified theological or divinity school within the meaning of 305 (d) of the Act. When relator registered with the local board he was given the classification of IV-D by reason of his statement that he was enrolled at the Seminary and was preparing for the rabbinate. In August 1944, the local board reclassified relator as 1-A, from which

112 classification he appealed. The appeal board sustained the local board. Thereafter a request to review his case and defer induction was denied. The date of his induction was December 26, 1944. Thereafter relator applied for a writ of habeas corpus. The writ was allowed on January 25, 1945, and was served upon General M. Pierson, Post Commanding Officer, Fort Dix, New Jersey.

Obedient to the command of said writ relator was produced in court. The commanding officer filed a response, which in effect set forth that relator was held as a soldier in the United States Army who had been selected and inducted under the provisions of the Selective Service and Training Act, as amended. Annexed to and made a part of the writ was the complete file of the local board.

At the hearing held February 2, 1945, petitioner introduced evidence showing his record of attendance in the seminary and tending to establish the fact that he was at the time of his reclassification and at the time of his induction in good faith pursuing his studies for the purpose of being a practicing rabbi.

Prior to induction petitioner had exhausted all his administrative remedies under the Selective Service and Training Act.

113 He now asserts he is exempt from military service under 305 (d) of the Act, which provides:

"Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act."

and further, under the Selective Service Regulation 622.44 (a), which is as follows:

"In Class IV–D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Training and Service Act."

The Act provides for local boards which, "under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards * * * all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final, except where an appeal is authorized and is taken * * *. The decision of such appeal boards shall be final in cases before them on appeal unless modified or changed by the President, as provided in the last sentence of Section 5 (1) of this act." 50 U. S. C. A. 310 (a) (2). The decision of the appeal board was not modified or changed.

114 Once again the action of a local board is brought to court for review, and again a court must determine to what extent it may or should review or interfere with the classification made by local boards under the Selective Service Law.

The Selective Service and Training Act makes no provision for judicial review of classifications of local boards. Yet it is generally conceded that due process of law requires that the courts be open, subject to certain limitations, to those who desire to challenge the action of such boards. United States v. Cain, 144 F. 2d, 944. The right to review, however, does not transfer to the courts the right to reclassify. Ex Parte Stanziale, 138 F. 2d, 312.

Although the local board is the agency charged with the duty of administering Selective Service, the law that governs in judicial review of acts of Administrative Boards is not controlling. "The task of classification of the nation's manpower for service in its defense differs greatly from the ordinary administrative action affecting an individual or a group. It is country wide in scope, it includes a large portion of the population, and obviously its operation must be both smooth and swift if the public object is to
115 be accomplished. The enemy will not wait for the process of litigation to determine who must and who may not fight." Ex Parte Stanziale, supra.

Recognizing the distinction between local draft boards and Administrative Boards generally, a narrower limit has been fixed governing the scope of judicial examination of the findings of local draft boards. The limited scope of such examination is discussed at length in both United States v. Cain (2 C. C. A.) supra, and Ex Parte Stanziale (3 C. C. A.), supra. In United States v. Cain the rule seems to be that the "examination is only to determine whether there is any evidence at all to support the findings of the local board." In Ex Parte Stanziale the rule seems to be be established that "the test of whether a draft board's action may be attacked seems to shift from whether its findings are supported by substantial evidence to whether it received and considered what a particular registrant submitted. And lack of such consideration is not here, as it is not elsewhere, proved by proving that the decision was wrong."

The local board found, in effect, that relator was not in good faith pursuing his studies for the purpose of becoming a rabbi. The file of the local board in evidence here discloses, in part
116 at least, the basis of this determination. Included in the file is a report (unsigned) of an Advisory Panel on Theological Classification. Relator admits that he appeared before such a panel. At the hearing herein he objected to this report and to its introduction as a part of the local board file, principally on the ground that "there is nothing in the selective service regulations which authorizes it." Such panels seem to be used generally by local boards in the city of New York. See United States, ex rel. v. Cain, supra, in which case the propriety of their use was recognized.

The local board is not circumscribed in its method and manner of procuring information regarding registrants and their classifications to such an extent that it may not call in experts or qualified persons to aid them in their work. Of course the board is not bound by their advice. The final decision is for the board, after a consideration of all pertinent facts before it, including the report of the panel, to which report the board may give such weight as they deem it entitled to receive.

Without attempting to outline the evidence contained in the file, it is sufficient to say that the hearing by the court disclosed that every contention now made by relator and all the facts presented to the court were presented to and considered by the local board and the appeal board. The relator in his testimony so admitted.

117 Did the local board have the right to determine the good faith of the relator? We think so. The exemption is for those students *preparing* [emphasis supplied] for the ministry. What was said in United States v. Cain, supra, at page 949, regarding the regulation concerning ordained rabbis is applicable here. It should not be presumed that Congress intended this exemption to be a sanctuary for those desiring not to serve in the armed forces.

It is not the province of the court in this proceeding to determine whether the finding of the local board was right or wrong. No opinion is now expressed as to that. It is the court's opinion that the finding of the local board in reclassifying relator is supported by evidence; and the board having fully and completely heard the relator, this court may not now say that its action was capricious or arbitrary. United States v. Cain, supra; In re Stanziale, supra.

The petition is dismissed and the writ is quashed.

Dated this 19th day of February 1945.

/S/ EUGENE RICE,
United States District Judge.

118 In United States District Court

[Title omitted.]

Order dismissing writ of habeas corpus

Filed March 9, 1945

The petitioner herein having verified and filed his petition dated December 27, 1944, praying for a Writ of Habeas Corpus directed to Brigadier General Madison Pearson, Commanding Officer at Fort Dix, New Jersey, commanding him to produce the body of

Jacob S. Samuels, and the Writ having been duly issued out of this Court by the Honorable Eugene Rice, then one of the judges assigned to this Court on January 25, 1945, and the respondent, Brigadier General Madison Pearson having filed his Return to the Writ of Habeas Corpus and the petitioner, through his attorney having traversed the Return and testimony having been taken in open Court,

Now, upon reading and filing the Petition of Jacob S. Samuels verified on the 27th day of December 1944, the Writ of Habeas Corpus issued out of this Court on January 25, 1945, and the Return of the respondent filed February 2, 1945, the traverse of the petitioner and having heard the testimony and examined the exhibits introduced by the petitioner and respondent respectively and after having heard the attorney and solicitor for the
119 petitioner in support of the same and the Honorable Thorn Lord, United States Attorney by Charles Stanziale, Esquire, Assistant United States Attorney, and due deliberation having been had and upon reading and filing the opinion of the Court,

Now, upon motion of Thorn Lord, United States Attorney by Charles Stanziale, Assistant United States Attorney,

It is ordered that the Writ of Habeas Corpus heretofore issued out of this Court on January 25, 1945, be and the same is hereby dismissed.

(S) EUGENE RICE,
United States District Judge.

Done at Newark, New Jersey, this 27th day of February 1945.

120 In United States District court

[Title omitted.]

Notice of appeal

Filed March 22, 1945

SIRS:

Please take notice that Jacob S. Samuels, the relator herein, hereby appeals to the United States Circuit Court of Appeals, Third Judicial Circuit, from the order made in this proceeding by Hon. Eugene Rice, Judge of the United States District Court, on the 2nd day of March 1945, and entered in the office of the Clerk of the United States District Court for the District of New Jersey on the 6th day of March 1945, dismissing the relator's petition herein for a Writ of Habeas Corpus for his release from the custody of General M. Pierson, Post Commanding Officer of Fort Dix, New Jersey, the respondent herein, and quashing said Writ of

Habeas Corpus, and that said Jacob S. Samuels, the relator herein, hereby appeals from each and every part of said order, as well as from the whole thereof, on both questions of law and on question of fact.

Dated: March 8, 1945.

Yours, etc.

GEORGE M. EICHLER,
26 Journal Square, Jersey City, N. J.,
Attorney for Relator, Jacob S. Samuels.

To:

THORNE LORD,
United States Attorney,
For the District of New Jersey.

BENJAMIN F. HAVENS,
Clerk of the U. S. District Court,
For the District of New Jersey.

Service acknowledged this 14th day of March 1945.

THORN LORD,
U. S. Atty.

GROVER C. RICHMOND,
Asst. U. S. Atty.

121 In United States Circuit Court of Appeals for the Third Circuit

[Title omitted.]

Order extending time

Filed Aug. 23, 1945

Upon the consent of the United States Attorney for the District of New Jersey, it is hereby

Ordered, that the time of the relator-appellant herein to serve and file his Record on Appeal be and the same hereby is extended to the 31st day of August 30, 1945.

Dated: July 30, 1945.

GOODRICH,
Judge, U. S. Circuit Court of Appeals,
For the Third Circuit.

The above order is hereby consented to.

Dated: July 23, 1945

(s) THORN LORD,
United States Attorney.

Certified copy from U. S. Circuit Court of Appeals for the Third Circuit.

122 In United States District Court

[Title omitted.]

Order extending time

Filed June 27, 1945

To the Honorable District Court of the United States for the District of New Jersey:

Upon the annexed stipulation and at the request of the attorneys for all of the parties hereto, it is hereby

Ordered, that the time of the relator-appellant herein to serve and file his record on appeal be and the same hereby is extended to the 30th day of July 1945.

Dated: June 27, 1945.

GUY L. FAKE,
Judge, United States District Court.

The entry of the within order extending the time of the relator-appellant to serve and file Record on Appeal in the above case is hereby consented to.

Dated: June 27, 1945.

GEORGE M. EICHLER,
Attorney for Relator-Appellant.
THORN LORD,
U. S. Atty. for Respondent-Appellee,
By VINCENT E. HULL,
Asst. U. S. Atty.

123 In United States District Court

[Title omitted.]

Order vacating order extending time

Filed June 27, 1945

It appearing, upon motion of Thorn Lord, United States Attorney for the District of New Jersey, by Vincent E. Hull, Assistant United States Attorney, that an order was heretofore entered on this date in this court extending time for serving and filing the record on appeal herein to July 30, 1945, and further, that the court was without authority to enter such order,

It is ordered that the aforesaid order of extension be and the same is hereby vacated and set aside.

June 27, 1945.

GUY L. FAKE,
Judge, United States District Court.

124 [Clerk's certificate to foregoing transcript omitted in printing.]

125 In United States Circuit Court of Appeals for the Third Circuit

Docket No. 8897

UNITED STATES OF AMERICA, EX REL JACOB S. SAMUELS, REALTOR-APPELLANT

v.

BRIGADIER-GENERAL MADISON PEARSON, RESPONDENT-APPELLEE.

Order to show cause

Filed Oct. 10, 1945

On reading and filing the annexed affidavit of Meyer Kreeger, sworn to the 8th day of October 1945, and upon the writ of habeas corpus issued herein by Mr. Justice Rice of the United States District Court, sitting in New Jersey, and the petition on which it was granted, upon the Notice of Appeal and the Record on Appeal filed in this Court on the 30th day of August 1945, and upon all of the papers and proceedings herein had,

Let the respondent-appellee, Brigadier General Madison Pearson, Post Commanding Officer, Fort Dix, New Jersey, his representatives and aids who may have had the custody of Jacob S. Samuels up to October 8, 1945, show cause on Thursday, October 11, 1945, at 10:30 A. M., in the forenoon of that day, at the Courthouse, 9th and Chestnut Streets, Philadelphia, Pa., why an order should not be made herein directing the return of the said Jacob S. Samuels, the relator herein, to the jurisdiction of this Court, and why during the pendency of and until the determination of the appeal herein after the said return of relator to the jurisdiction of this Court the said Brigadier General Madison Pearson, Post Commanding Officer, Fort Dix, New Jersey, his representatives and aids who may then have the custody of the said Jacob S. Samuels should not be stayed, enjoined, and restrained from

126 removing or causing the said Jacob S. Samuels to be removed from the jurisdiction of this Court and/or the territorial limits of this Court.

Sufficient cause appearing therefor, Let service of a copy of this Order to Show Cause, together with the attached affidavit, upon the office of the U. S. Attorney in Trenton, New Jersey, on or before 2:00 P. M. o'clock of Wednesday, October 10, 1945, be deemed good and sufficient service.

Dated: Philadelphia, Pa., October 10, 1945.

GOODRICH,
U. S. Circuit Court Judge
For the Third Circuit.

127 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted.]

Affidavit of Meyer Kreeger

Filed Oct. 10, 1945

Meyer Kreeger, being duly sworn, deposes and says:

1. That he is of counsel for the above named relator-appellant and makes this affidavit in support of the within Order to Show Cause to direct the return of the relator to the jurisdiction of this Court.

2. That relator, a student preparing for the rabbinate in a recognized theological seminary on the Selective Service List, was inducted into the Armed Forces of the United States.

3. That on relator's application a writ of habeas corpus was obtained, signed by Mr. Justice Rice of the United States District Court, sitting in New Jersey. After the hearing and submission of briefs an order was entered on February 27, 1945 dismissing the writ. An appeal was taken and pending appeal relator was returned to the custody of respondent.

4. That because of the decision favorable to relator by the Circuit Court of Appeals, Second Circuit in the case of U. S. ex rel Levy v. Cain, 149 Fed. (2d) 338, deponent was advised by Mr. Hull, the Assistant U. S. Attorney for New Jersey, that the file in this case, as well as in a number of similar cases in which deponent is counsel, was requested by and sent down to
128 Washington during the summer for review with the possibility that the rule of the Second Circuit might be applied to this case. Because of that, it was agreed to withhold filing of the record until Washington determined its policy.

5. That on August 10, 1945, deponent was advised by Mr. Hull that Washington had decided to contest the appeal. His language is as follows:

"Referring to the above case, you are now advised that we have decided to contest the appeal. We desire that you proceed promptly, and, for the reason that the appellant's military status remains unsettled, that you comply in full with the time limitations of the rules of the Third Circuit Court."

6. That accordingly, deponent caused two copies of the record to be filed on August 30, 1945, and pursuant to permission obtained from this Court appellant's brief and appendix will be filed in this Court, and copies served upon the U. S. Attorney in New Jersey, on October 10, 1945.

7. That during all of this time the said relator, Jacob S. Samuels, was kept in custody at Fort Dix, New Jersey, pending the determination of the appeal.

8. That deponent has been advised this day by telephone call from the said Jacob S. Samuels that he has been shipped away from Fort Dix and outside of the jurisdiction of this Court.

9. That deponent has telephoned the Second Army Command and spoken to Major Carey, and was advised that Jacob S. Samuels was shipped to a camp which is outside of the territorial limits of this Circuit. Deponent has also spoken to Mr. Hull, the Assistant U. S. Attorney, and was similarly apprised of the same fact. Both Mr. Hull and Major Carey stated orally that Jacob S. Samuels would be returned to the jurisdiction of this court immediately upon the order of this Court at any time.

129 10. Deponent also spoke, today, to Major Samuel Beech of the Judge Advocate General's office in Washington D. C., who also stated that if the Court should make a direction to that effect Jacob S. Samuels would be returned immediately to the jurisdiction of the Third Circuit.

11. That deponent has been further advised this day that Jacob S. Samuels has been removed to Camp Belvoir, Virginia, which is outside of the territorial jurisdiction of this Court.

12. That the rights of the relator-appellant herein has been impaired by the removal from this jurisdiction for it may make his case entirely moot under the authority of the United States Supreme Court in the case of U. S. ex. rel. Lynn, v. Downer, 322 U. S. 756; rehearing denied 65 S. Ct. 426, where it was held that a removal of the soldier in a similar case from the jurisdiction rendered the question moot and thus prevented relator in that case from obtaining a final determination of his case.

13. That Rule 17 of this Court, subdivision 4, specifically says:

"The initial order respecting the custody or enlargement of the prisoner pending review, as also any recognizance taken, shall be deemed to cover not only the review in this court but also the further possible review in the Supreme Court; and only where special reasons therefor are shown to this court will it disturb that order, or make any independent order in that regard."

14. That this Court has made no order in that regard in this case respecting custody, nor has any further order been made or entered, to the best of deponent's knowledge, by the lower court.

15. That if the Army authorities be allowed to remove relator in this case from the jurisdiction of this Court and to keep him so removed in the State of Virginia, where deponent is advised

130 and verily believes he is at present, then the same Army authorities can continue to remove him to any other portion of the country and make it impossible for the relator to obtain a

final determination of his case. That such a practice would result in obtaining writ after writ in the various jurisdictions to which the man is moved and would make the remedy of habeas corpus practically futile.

16. That in view of the fact that this appeal can be heard in a short time, as the appellee's brief will be due on October 30th, 1945, and in view of the fact that the Government is prepared to return the man to this jurisdiction if the Court so orders, deponent respectfully asks this Court for an order directing the respondent-appellee to return relator forthwith to the jurisdiction of this Court.

17. That deponent makes this affidavit in person because he is acquainted personally with the facts herein stated.

18. That no previous application for this or similar relief has been made to any other court or judge.

19. That because of all of the above, deponent moves by way of an order to show cause and respectfully asks that this order be made returnable Thursday, October 11, 1945.

MEYER KREEGER.

Sworn to before me this 8th day of October 1945.

MAX L. FINKELSTEIN,
Notary Public, Bronx County.

[File endorsement omitted.]

192 In United States Circuit Court of Appeals

[Title omitted.]

Order assigning judge

Filed Oct. 11, 1945

And now, to wit: this 11th day of October A. D. 1945, it is ordered that Hon. Albert Lee Stephens, U. S. Circuit Judge, for the Ninth Circuit, be, and he is hereby assigned to sit in above case in order to make a full court.

GOODRICH, *Circuit Judge.*

193 In the United States Circuit Court of Appeals

[Title omitted.]

Minute entry

And afterwards, to wit, the 11th day of October 1945, come the parties aforesaid by their counsel aforesaid, and this case being called for hearing on Appellant's Motion for Rule to Show Cause, before the Honorable Herbert F. Goodrich, Honorable Albert Lee

Stephens, and Honorable Gerald McLaughlin, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 22d day of October 1945, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

134 In United States Circuit Court of Appeals

[Title omitted.]

Order denying application for relator's return to this jurisdiction, etc.

Filed Oct. 22, 1945

Before ALBERT LEE STEPHENS, GOODRICH, and MCLAUGHLIN, Circuit Judges

On this 22nd day of October 1945 the application for return of relator, Jacob S. Samuels, to the jurisdiction of this Court, and for injunction, enjoining, and restraining Brigadier General Madison Pearson, Post Commanding Officer, Fort Dix, New Jersey, his representatives and aides from removing Jacob S. Samuels from the jurisdiction of this Court is herewith ordered denied.

GOODRICH, *J.*

[File endorsement omitted.]

135 In the United States Circuit Court of Appeals

[Title omitted.]

Minute entry

And afterwards, to wit, the 9th day of November 1945, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs; before the Honorable Albert B. Maris, Honorable Herbert F. Goodrich, and Honorable John J. O'Connell, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 15th day of November 1945, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

136 In United States Circuit Court of Appeals
For the Third Circuit

No. 8897—October Term, 1945

UNITED STATES EX REL. JACOB S. SAMUELS, APPELLANT

v.

GENERAL MADISON PEARSON, POST COMMANDING OFFICER, FORT DIX, NEW JERSEY

No. 8992—October Term, 1945

UNITED STATES EX REL. HARRY HOROWITZ, APPELLANT

v.

GENERAL MADISON PEARSON, POST COMMANDING OFFICER, FORT DIX, NEW JERSEY

Appeals from Orders of the District Court of the United States for the District of New Jersey

Argued November 9, 1945

Before MARIS, GOODRICH, and O'CONNELL, Circuit Judges

Opinion of the court

Filed November 15, 1945

PER CURIAM:

The relators in these two cases claimed exemption from military training and service under the Selective Service Act. The claim of each was based upon the asserted fact that he was a student preparing for the ministry. The local board of each at first granted him exemption but, after receiving from the New York City Director of Selective Service the statement and recommendation of an "advisory panel on theological classifications" and after further proceedings not necessary here to relate, cancelled his exemption and reclassified him in Class IA. Each was subsequently inducted into the army and then sued out a writ of habeas corpus in the district court, which after hearing that court discharged. The present appeals followed.

In each of these cases, as in the case of United States ex rel. Levy v. Cain, 149 F. 2d 338 (C. C. A. 2, 1945), the membership of the "advisory panel" was cloaked in anonymity, its statement not being signed, and the identity of its membership not being disclosed to the relator or appearing in the record of the proceedings before the local board. In each case it made through the New York City

Director of Selective Service a recommendation to the local board as to the action which the board should take.

We fully agree with the conclusion reached by the Circuit Court of Appeals for the Second Circuit that the interjection of the statement and recommendation of the "advisory panel" into the proceedings of the local boards vitiated those proceedings and rendered the relator's reclassification and induction invalid. The reasons for this conclusion are stated in Judge Learned Hand's opinion in the cited case with such clarity and force as to require no amplification by us.

Accordingly in each case the order of the district court is reversed and the cause is remanded to that court with directions to discharge the relator from military custody, without prejudice to further lawful proceedings under the Selective Service Act in his case.

137 In the United States Circuit Court of Appeals
for the Third Circuit

No. 8897—October Term, 1945.

UNITED STATES OF AMERICA, EX REL. JACOB S. SAMUELS, APPELLANT

vs.

GENERAL MADISON PEARSON, POST COMMANDING OFFICER, FORT DIX, NEW JERSEY

Judgment

Filed Nov. 15, 1945

Present: MARIS, GOODRICH, and O'CONNELL, Circuit Judges

On appeal from the District Court of the United States, for the District of New Jersey.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed, and the cause is remanded to that court with directions to discharge the relator from military custody, without prejudice to further lawful proceedings under the Selective Service Act.

By the Court.

MARIS, *Circuit Judge.*

NOVEMBER 15, 1945.

[File endorsement omitted.]

138 [Clerk's certificate to foregoing transcript omitted in printing.]

139 In the Supreme Court of the United States

Order extending time within which to file petition for certiorari

On consideration of the motion of the Solicitor General in the above-entitled cause, and good cause therefor having been shown, it is now hereby ordered that the time within which a petition for writs of certiorari may be filed herein be and the same is hereby extended for a period of 30 days from February 15, 1946.

Dated this 12th day of February 1946.

HAROLD H. BURTON,
Associate Justice of the
Supreme Court of the United States.

U. S. GOVERNMENT PRINTING OFFICE: 1946

Supreme Court of the United States

Order allowing certiorari

Filed May 27, 1946.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.